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Terrorism and human rights

**Progress report prepared by Ms. Kalliopi K. Koufa,
Special Rapporteur**

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CONTENTS

		Paragraphs	Page
Introduction		1 - 12	3
I.	AN UPDATE ON INTERNATIONAL ACTION	13 - 23	5
II.	THE PROBLEM OF DEFINITION	24 - 81	8
A.	The controversy before the Sub-Commission	24 - 31	8
B.	The question of the actors involved in the exercise of terror or terrorism	32 - 70	10
C.	Lessening the controversy: the necessity to distinguish terrorism from armed conflict	71 - 81	19
III.	CONTEMPORARY FORMS OF TERRORISM	82 - 101	22
A.	Weapons of mass destruction and terrorism	84 - 98	23
B.	Terrorism and new information technologies	99 - 101	27
IV.	THE IMPACT OF TERRORISM ON HUMAN RIGHTS	102 - 127	28
A.	Direct impact	104 - 117	28
B.	Indirect impact	118 - 120	31
C.	The question of impunity	121 - 124	32
D.	Extradition	125 - 127	33
V.	CONCLUDING OBSERVATIONS	128 - 134	34

Introduction

1. In its resolution 1996/20 of 29 August 1996, adopted without a vote, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust Ms. Kalliopi K. Koufa with the task of preparing, without financial implications, a working paper on the question of terrorism and human rights, to be considered at its forty-ninth session.

2. In its resolution 1997/42 of 11 April 1997 entitled "Human rights and terrorism", the Commission on Human Rights, noting the decision of the Sub-Commission to have a working paper prepared on the question of human rights and terrorism, reiterated its unequivocal condemnation of all acts, methods and practices of terrorism, regardless of their motivation, in all its forms and manifestations, wherever and by whomever committed, as acts of aggression aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences for the economic and social development of States, and decided to continue consideration of the question at its fifty-fourth session as a matter of priority.

3. At the forty-ninth session of the Sub-Commission, Ms. Koufa submitted a working paper (E/CN.4/Sub.2/1997/28), identifying the diverse issues and problems involved in the discussion of this question and containing a number of proposals for a study on terrorism and human rights. After examining the working paper, the Sub-Commission adopted resolution 1997/39 on 28 August 1997, in which it expressed its deep appreciation to Ms. Koufa for her analytical, very comprehensive and well-documented paper, and recommended that the Commission on Human Rights authorize her appointment as Special Rapporteur to conduct a comprehensive study on terrorism and human rights on the basis of her working paper.

4. At its fifty-fourth session, the Commission on Human Rights, in its decision 1998/107 of 17 April 1998, approved the appointment of Ms. Koufa as Special Rapporteur and requested the Secretary-General to provide the Special Rapporteur with all the assistance necessary to enable her to accomplish her task. The Economic and Social Council, in its decision 1998/278 of 30 July 1998, endorsed decision 1998/107 of the Commission on Human Rights.

5. Owing to the insufficient time between the confirmation of her appointment by the Commission and the deadline for submitting Sub-Commission documents, the Special Rapporteur was unable to prepare a preliminary report for the fiftieth session of the Sub-Commission. However, she made an oral presentation at that session, in which she highlighted the essential elements of her study, and discussed her ideas on the purpose, scope, sources and structure of a preliminary report. After expressing its interest in the study on human rights and terrorism and in the oral statement by the Special Rapporteur concerning the basis and the orientation of the study, the Sub-Commission adopted resolution 1998/29 on 26 August 1998, in which it requested the Special Rapporteur to submit her preliminary report at its fifty-first session.

6. At its fifty-first session, the Sub-Commission examined the preliminary report submitted by the Special Rapporteur (E/CN.4/Sub.2/1999/27), containing the historical background of the study and an analysis of the major areas in which terrorism puts under threat the social and political values that relate, directly or indirectly, to the full enjoyment of human rights and fundamental freedoms, as well as an identification of priority areas and questions most deserving of examination in the next phases of the study and an indication of the methods to be used to complement the essential research. In resolution 1999/26 of 26 August 1999, the Sub-Commission expressed its deep appreciation and thanks to the Special Rapporteur for her excellent and comprehensive preliminary report and requested the Secretary-General to transmit this report to Governments, specialized agencies and concerned intergovernmental and non-governmental organizations with the request that they submit to the Special Rapporteur as soon as possible comments, information and data relating to the study on terrorism and human rights.

7. In the same resolution the Sub-Commission requested the Secretary-General to give the Special Rapporteur all the assistance necessary for the preparation of her progress report, in particular by providing for visits of the Special Rapporteur to Geneva, New York and the United Nations Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention in Vienna, in order to hold consultations with the competent services and bodies of the United Nations, to complement her essential research and to collect all the needed and up-to-date information and data. The Sub-Commission recommended that the Commission on Human Rights approve this request to the Secretary-General.

8. At its fifty-fourth session, the Commission on Human Rights, in its resolution 2000/30 of 20 April 2000, taking note of Sub-Commission resolution 1999/26, requested the Secretary-General to continue to collect information, including a compilation of studies and publications, on the implications of terrorism, as well as the effects of the fight against terrorism, on the full enjoyment of human rights from all relevant sources, and to make it available to the concerned special rapporteurs, including the Special Rapporteur on human rights and terrorism of the Sub-Commission. The Commission endorsed the Sub-Commission's request to the Secretary-General to give the Special Rapporteur all the assistance necessary, in order to hold consultations with the competent services and bodies of the United Nations system to complement her essential research and to collect all the needed and up-to-date information and data for the preparation of her progress report. The Economic and Social Council, in its decision 2000/260 of 28 July 2000, approved this request to the Secretary-General.

9. The Secretariat, in a note to the Sub-Commission at its fifty-second session (E/CN.4/Sub.2/2000/31), set out the technical reasons for the inability of the Special Rapporteur to finalize her progress report within the time available for the preparation of documents for that session. In an oral statement explaining the substantive and procedural reasons and delays that had made the submission of her progress report at the fifty-second session impossible, the Special Rapporteur requested that the Sub-Commission allow her to submit her progress report at its fifty-third session. The Sub-Commission, in its decision 2000/115 of 18 August 2000, requested the Special Rapporteur to submit the progress report on her study at its fifty-third session.

10. The Special Rapporteur has proceeded with the preparation of this progress report on terrorism and human rights from the bases laid down in the working paper (E/CN.4/Sub.2/1997/28) and the preliminary report (E/CN.4/Sub.2/1999/27). Therefore, the present report should be studied with the aforementioned documents in mind. The report will not revert to the analysis of the relationship of terrorism to human rights and its broader international implications as discussed in the preliminary report. Its main purpose is to move ahead and explore other priority areas touched upon in the earlier documents prepared by the Special Rapporteur, namely the problem of definition and of the actors involved in the exercise or use of "terrorist" activity, the development of new forms of terrorism and the probability of mass destruction terrorism and, finally, a number of issues associated with the consequences of terrorism for human rights. It also attempts to provide an update on recent international action on terrorism and to give attention to issues raised by the Commission on Human Rights in its resolutions 1999/27 of 26 April 1999, 2000/30 of 20 April 2000 and 2001/37 of 23 April 2001.

11. Accordingly, the present progress report is divided into five chapters. Chapter one provides information on the development of international action on terrorism since the preliminary report was issued. Chapter two addresses problems regarding the definition of terrorism and focuses in particular on the actors or potential perpetrators of terrorism, as well as on the necessity to distinguish terrorism from armed conflict. Chapter three explores the threat of mass destruction terrorism and the wide-ranging debate that is currently carried on concerning contemporary forms of terrorism. Chapter four is devoted to the impact of terrorism on human rights and to the Commission's requests that the Special Rapporteur give attention to the questions presented in its resolutions 1999/27, 2000/30 and 2000/31. Concluding observations can be found in chapter five.

12. The mode of analysis of the subject matter at hand follows the perspective of international law, including the law of human rights, international humanitarian and criminal law, but not only that. Terrorism is a distinctive form of criminal activity in that it encompasses elements of politics and conflict. The Special Rapporteur initiated the necessary direct contacts with the Office of Legal Affairs of the United Nations in New York and the Terrorism Prevention Branch of the United Nations Office for Drug Control and Crime Prevention, based in Vienna. The documents which have so far been made available to the Special Rapporteur suggest that further analysis and consultation with these focal points that address the international phenomenon of terrorism from different perspectives would be extremely useful. Given the complexity and diversity of questions to be considered in the framework of the study on terrorism and human rights, it also seems necessary that a second progress report be prepared for consideration by the Sub-Commission. A recommendation to this effect is included at the end of the report.

I. AN UPDATE ON INTERNATIONAL ACTION

13. Since the submission of the working paper and the preliminary report there has been recent additional international action on terrorism that should be taken into account.[1]

14. On 19 October 1999, the Security Council voted unanimously to wage a common fight against terrorists anywhere. In its historic resolution 1269 (1999) - its first resolution ever to address the matter of terrorism in general[2] - the Security Council, emphasizing the necessity to

intensify the fight against terrorism at the national level and to strengthen, under the auspices of the United Nations, effective international cooperation in this field on the basis of the principles of the Charter and norms of international law, including respect for international humanitarian law and human rights, stressed the vital role of the United Nations in strengthening international cooperation in combating terrorism and emphasized the importance of enhanced coordination among States, international and regional organizations. It also called upon States to take appropriate steps to deny those who plan, finance or commit terrorist acts safe havens by ensuring their apprehension and prosecution or extradition, and to take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts.

15. The General Assembly, in its resolution 54/109 of 9 December 1999, adopted the International Convention for the Suppression of the Financing of Terrorism, the full text of which is set out in the annex to that resolution. In its resolution 54 /110 of 9 December 1999 entitled "Measures to eliminate international terrorism", the General Assembly decided that the Ad Hoc Committee established by its resolution 51/210 of 17 December 1996[3] should continue to elaborate a draft international convention for the suppression of acts of nuclear terrorism, should address means of further developing a comprehensive legal framework of conventions dealing with international terrorism, including considering the elaboration of a comprehensive convention on international terrorism, and should address the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Ad Hoc Committee met from 14 to 18 February 2000 and discussed all three items.[4] Its report reflects a serious divergence of views regarding both the nuclear terrorism draft and the high-level conference.[5] There was recognition that the question of the elaboration of a comprehensive convention on international terrorism was not then before the Ad Hoc Committee but that completion of work on the other two items would facilitate work on such a convention.[6]

16. In his report on human rights and terrorism to the General Assembly at its fifty-fourth session (A/54/439 of 6 October 1999), the Secretary-General set out, in summary fashion, the content of the replies received from a number of Governments on the implications of terrorism, in all its forms and manifestations, for the full enjoyment of all human rights and fundamental freedoms, pursuant to General Assembly resolution 52/133 of 12 December 1997.

17. In its resolution 54/164 of 17 December 1999 entitled "Human rights and terrorism", the General Assembly condemned the violations of the right to live free from fear and of the right to life, liberty and security, as well as the incitement of ethnic hatred, violence and terrorism. It reiterated its unequivocal condemnation of the acts, methods and practices of terrorism as activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences for economic and social development. It also urged the international community to enhance cooperation at the regional and international levels in the fight against terrorism, in accordance with relevant international instruments, including those relating to human rights.

18. The Secretary-General, in his most recent report, entitled "Measures to eliminate international terrorism" (A/55/179 of 26 July 2000 and A/55/179/Add.1 of 9 October 2000), sets out additional information received from Governments and international organizations in the light of General Assembly resolution 49/60 of 9 December 1994, a list of the existing 19 international conventions (global and regional) pertaining to international terrorism,[7] and progress in the preparation of a compendium on national laws and regulations relating to the prevention and suppression of international terrorism. The report aiso has a chart indicating accession to or ratification by States of the 19 conventions.

19. On 8 September 2000, in its resolution 55/2, the General Assembly adopted the United Nations Millennium Declaration, which, in paragraph 9, includes the pledge to take "concerted action against international terrorism, and to accede ... to all the relevant international conventions". On 12 December 2000, the General Assembly adopted resolution 55/158, entitled "Measures to eliminate international terrorism", in which it decided that its Ad Hoc Committee on international terrorism should continue to elaborate a comprehensive convention on international terrorism and should continue its efforts to resolve the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and that it should keep on its agenda the question of convening a high-level conference on terrorism. The Ad Hoc Committee met from 12 to 23 February 2001 and continued its work on the above-mentioned items, building upon the work accomplished during the fifty-fifth session of the General Assembly within the framework of a working group of the Sixth Committee.[8]

20. On 16 March 2000, the European Parliament made mention of terrorism in its resolution on respect for human rights in the European Union.[9] This resolution "[r]eiterates that terrorism is a violation of human rights" and underlines the importance of cooperation between States in combating it and the need for appropriate indemnity for victims of terrorism "in conformity with the guidelines of the Commission communication on crime victims in the European Union".[10]

21. In April 2000, the Thirteenth Ministerial Conference of the Movement of Non-Aligned Countries reiterated its position on terrorism and reaffirmed its 1998 initiative calling for an international summit conference under the auspices of the United Nations.[11]

22. The Organization of the Islamic Conference (OIC) has also addressed terrorism. At its twenty-sixth session, held at Ouagadougou, Burkina Faso, from 28 June to 1 July 1999, the Islamic Conference of Foreign Ministers adopted the Convention of the Organization of the Islamic Conference on Combating International Terrorism.[12] At its Ninth Summit Conference (Qatar, 2000) the OIC reiterated its support for a high-level international conference on terrorism and again stressed the OIC concerns about the need to distinguish clearly terrorism from people's struggle for "national liberation ... and the elimination of foreign occupation and colonial hegemony as well as for regaining the right to self determination".[13] In its resolution No. 65/9 - P(IS), the Ninth Summit endorsed the OIC Convention for Combating International Terrorism and in its resolution No. 64/9 - P(IS) reiterated its support for convening an international conference under the auspices of the United Nations to define terrorism.

23. Finally, the Organization of African Unity (OAU) adopted the OAU Convention on the Prevention and Combating of Terrorism during the 35th Ordinary Session of the Assembly of Heads of State and Government, in July 1999, in Algiers, whereas a Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism was signed at Minsk on 4 June 1999.

II. THE PROBLEM OF DEFINITION

A. The controversy before the Sub-Commission

24. As indicated in her working paper and in her preliminary report, the Special Rapporteur considers the issue of terrorism to be one of the most controversial issues in the contemporary international legal and political arena. This has been apparent since 1937, when concerted international effort to promulgate the International Convention for the Prevention and Punishment of Terrorism, adopted under the auspices of the League of Nations, failed. Since the failed 1937 effort, the international community has addressed terrorism only in a piecemeal fashion (i.e. crime by crime/issue by issue) rather than comprehensively. The controversial issue of terrorism has thus been approached from such different perspectives and in such different contexts that it has been impossible for the international community to arrive at a generally acceptable definition to this very day.[14] Instead, there exists a plethora of definitions and working definitions advanced by scholars and practitioners,[15] which tend to be either too expansive and broad, so as not to omit any possible interpretation of the phenomenon, or more restricted and narrow, focusing eventually on particular terrorist acts and excluding wide-ranging interpretations.

25. Indeed, it may be that the definitional problem is the major factor in the controversy regarding terrorism. This is all the more true when considering the high political stakes attendant upon the task of definition. For the term terrorism is emotive and highly loaded politically.[16] It is habitually accompanied by an implicit negative judgement and is used selectively. In this connection, some writers have aptly underlined a tendency amongst commentators in the field to mix definitions with value judgements and either qualify as terrorism violent activity or behaviour which they are opposed to or, conversely, reject the use of the term when it relates to activities and situations which they approve of.[17] Hence the famous phrase "one man's terrorist is another man's freedom fighter".

26. Because of these problems, the Special Rapporteur has pointed out that in view of the complexity and amplitude of the human rights dimensions of terrorism it would be premature and counterproductive to proceed with a definition before the Sub-Commission determines which issues it considers worth developing,[18] and that finding an all-encompassing and generally acceptable definition of terrorism is too ambitious an aim.[19] However, she had also indicated her leaning towards the view that, in future reports, she may have to explore some working definitions, in order to delimit the subject matter with greater precision and, in particular, with a view to identifying its major aspects and possible relationship to the question of accountability.[20]

27. It is important to note at this point that the views of the Sub-Commission members are divided as to whether the study should undertake a definition of terrorism. A review of the discussions held at the forty-ninth and fifty-first sessions of the Sub-Commission testifies that

the following positions were taken by the expert members on this issue. While Mr. A. Khalil maintained that any attempt to formulate a definition of terrorism might well prove elusive and unrewarding at the present stage,[21] and Mr. F. Yimer agreed with the Special Rapporteur that it would be premature and counterproductive to proceed with a definition until the Sub-Commission determined which issues it considered worth developing,[22] Mr. L. Joinet pointed out that it was better not to define terrorism.[23] Mr. E.H. Guissé considered that before any generally acceptable definition could be arrived at deeper study and extensive discussion would be required and that it was possible that such a definition was unattainable.[24] Mr. H. Fix Zamudio expressed his conviction that it would be possible, albeit difficult, to find a concept of terrorism that could be used as a working hypothesis, as had happened in the case of the concepts of indigenous populations and minorities,[25] and Mr. M. Bossuyt expressed the hope that the Special Rapporteur would succeed in arriving at a definition that would at least find acceptance in the Sub-Commission.[26]

28. It should also be noted that the views of the Sub-Commission members vary also in relation to some of the key areas or key elements of contention regarding definition, such as the actors involved in terrorism (Who is using terrorism? Or, who can be identified as engaging in the exercise of terrorism?) and the nature of the acts (What instances of crime or pattern of acts can be qualified as terrorism?). In this connection, it will be recalled that during the discussions in the Sub-Commission, some expert members associated the problem of defining international terrorism with the controversy about the actors involved in it, whether State or non-State entities, while others emphasized the objective elements of the crime and would rather concentrate on an enumeration of acts that could be considered terrorist.

29. Thus, for instance, some members argued for the need to address State terrorism[27] or terrorism promoted or tolerated by States and terrorism emanating from irregular armed groups and other groups and organizations.[28] It was also pointed out that the study should attempt to define the different forms of terrorism[29] and distinguish between acts of terrorism according to who was responsible for them, whether States or groups and States.[30] Other members indicated that there existed already criteria for the definition of terrorist acts,[31] that characterizing as criminal certain types of conduct, or drawing up a list of serious crimes defined by objective elements of the crime and possibly the nature and extent of the direct effects, was what was needed,[32] and that specific instances of terrorism should be considered,[33] while one member pointed out with regard to definition that an analytical exploration was needed, which should encompass not only the act (its nature and pattern) but also the actor (government-linked elements and non-State actors operating inside and outside the country), as well as the target of terrorism.[34]

30. It has been and remains the position of the Special Rapporteur that the study does not need to make use of a precise and/or generally accepted definition of terrorism and that, in any case, a definition should not yet be used. However, the study does not need to shy away from the conceptual analysis of terrorism or from scrutinizing its essential elements and manifestations, with a view to obtaining and drawing together basic definitional components and criteria that could eventually guide the Sub-Commission towards the advancement or articulation of a definition of terrorism, for the purposes of the study, before the study is completed.

31. Since this is a progress report, it is at this time more important to continue discussing questions in order to induce more comments from Sub-Commission members, observers and non-governmental organizations, rather than pursue final answers. In this respect, the Special Rapporteur also accepts the suggestion, already made some time ago, by another Sub-Commission expert who, noting the differing interpretations within the Sub-Commission, said that the Sub-Commission's task would be "to prune away and to discuss, so that opinions could coalesce".[35]

B. The question of the actors involved in the exercise of terror or terrorism

1. Introduction

32. One of the major reasons for the failure to come to a generally acceptable definition of terrorism is that different users of definition concentrate almost entirely on behavioural description (i.e. on certain conduct or behaviour and its effects) and do not spell out clearly who can use terrorism. Yet, the term "terrorism" carries almost always the flavour of some (subjective) moral judgement: some classes of political violence are justified whereas others are not. The same type of conduct or behaviour will or will not be viewed as terrorism by a particular observer according to the moral meaning or justification ascribed to it. Thus, the labelling of a particular act as "terrorist" may be more a formulation of a social judgement than a description of a set of phenomena.[36] As a consequence, a descriptive (objective) definition of terrorism which focuses on certain behaviour and its effects, and does not allow consideration of the identity of the author or perpetrator, may be useful but not absolutely precise or satisfactory in containing and explaining a relativist concept, tempered by considerations of motive and politics, such as terrorism.

33. The above observations are illustrated well by the very practice within the United Nations, where among the main stumbling blocks in the effort to define terrorism has been the question of who can be identified and labelled as "terrorist". In fact, review of action undertaken by the General Assembly and the Commission, as well as records of the discussions held in the framework of these organs, and of the various ad hoc committees on terrorism established by the General Assembly,[37] as this issue has progressed, reveal that a certain degree of consensus has been obtained on some of the elements of conduct that comprise terrorism, but not on who can use terrorism, or - to put it otherwise - on who can be a potential author of terrorism.

34. Thus, in considering alternative approaches to definition, it may be valuable not to start by seeking to determine at present what conduct or acts should be included under the concept of terrorism but by attempting to approach the concept of terrorism by reference to the authors or instigators in situations that are commonly perceived and interpreted (or characterized) in both academic discussion and ordinary parlance as "terrorism". This approach has the advantage of seeking to lessen the controversy or, at least, make it more manageable by spelling it out clearly and trying to explain it.

35. This approach involves examination of the basic distinction made between State terrorism and sub-State or individual terrorism and understanding of the multifold manifestations of both State and sub-State or individual terrorism. The distinction and categorization of the

above types of terrorism are, in the opinion of the Special Rapporteur, not only important and relevant to the present study but also the proper basis to ask for guidance on whether, eventually, it will be desirable, for the purposes of the study, to exclude any category or form of terrorism. Such guidance will, in turn, help the Special Rapporteur in delimiting more precisely the scope of the study as to the acts and the targets of terrorism.

2. State and sub-State (or individual) terrorism

36. In considering the concept of terrorism by reference to potential actors or instigators in a situation recognized in both academic discussion and common parlance as terror or terrorism, there is a foremost distinction to be made between State terrorism (i.e. terrorism used by the State) and sub-State (or individual) terrorism (i.e. terrorism exercised "from below",[38] or against the State). This foremost distinction between State and sub-State (or individual) terrorism is now a generally acceptable component of the debate on terrorism, despite the fact that some commentators prefer to focus attention on State terrorism and others on sub-State (or individual) terrorism. This distinction is, moreover, useful in that it covers not only the historical genesis of modern terrorism[39] and the evolutionary alteration that its ordinary meaning has undergone since it first came into use,[40] but also current concepts of international terrorism, as will be seen in greater detail below.[41]

37. Indeed, the concept of State terrorism or terror of State originated from the "régime de la terreur" which evolved between 1792 and 1794, during the French Revolution, wherein terror-violence was used intentionally and systematically by the revolutionary government as an instrument of political repression and social control. Confronted with external and internal crises (i.e. the threat of foreign invasion, civil war, economic hardship, counterrevolution and the possibility of a complete breakdown of State authority) the French Government under Robespierre responded by creating machinery and legislation that made the (Jacobin) "terror" possible, i.e. a ruthless policy directed against suspected enemies that consisted of arrests, imprisonments, confiscations of property, torture and executions, and the spreading of intimidation and fear in order to consolidate State authority.[42]

38. The concept of sub-State (or individual) terrorism emerged almost a century later, between 1878 and 1881, and evolved with the passage of time as part of the terrorist process, first in tsarist Russia, and then across Europe and in the United States. The concept embraced the anti-State terror tactics of individuals and groups inspired and affected by the anarchist ideology and philosophy that rejected the State, all government-made laws and private property. Acts of violence and intimidation (such as assassinations - targeting in particular heads of State, ministers or other government officials and prominent political or business personalities - bombings, sabotage and robberies) by individuals and groups who tried to enforce their political ideas by terrorizing the State and the public, in order to revolutionize the masses and bring about social and political change, generated considerable attention and eventually became a prominent feature of life in many countries.[43]

39. Both the concept of State terrorism and the concept of sub-State (or individual) terrorism significantly expanded and evolved in the course of the twentieth century, as social and technological changes manifestly affected terrorist operations and tactics, and their effectiveness, as well as terrorist philosophy.[44]

40. In particular, the spread of ideological violence and the fragmentation or dismantling of existing socio-political structures, on the one hand, and the advances in the fields of transport, communications and weaponry, on the other hand, facilitated the emergence of transnational and international terrorism. Increased mobility, cooperation and links not only between non-State terrorist actors from divergent political, ethnic and geographical backgrounds but also between State and non-State terrorist actors appeared, and the manifestations of both State and sub-State (or individual) terrorism multiplied and changed. Furthermore, the dividing line between terrorism and criminality gradually became less and less distinct and the targets of terrorism less and less concrete.

41. However, despite the ever expanding and evolving behavioural and stylistic variables which have come to characterize terrorism in our days, the dual conceptual distinction between State and sub-State (or individual) terrorism retains all its validity and utility for purposes of analysis, and to help illuminate and understand the two different - i.e. State and anti-State - basic dimensions of the phenomenon of terrorism. After all, it is obvious that almost all modern variants of terrorism trace their immediate antecedents to these two different expressions or dimensions of the phenomenon.

3. Manifestations of State terrorism

(a) Regime or government terror

42. There are different manifestations of terrorism used by the State. In the first place, there is the so-called "regime" or "government" terror, i.e. the traditional type or form of State terrorism, which is conducted by the organs of the State against its own population or the population of an occupied territory, in order to preserve a given regime or suppress challenges to its authority. [45] The most widely known historical examples of this type of State terrorism include the "reign of terror" in France under Robespierre, mentioned already, [46] the atrocities of the Stalinist regime in the Soviet Union between 1929 and 1946, [47] and the State terror of Hitler's Nazi Germany culminating in the genocide of the Jews and Gypsies and the mass slaughter of Slavic people between 1933 and 1945. [48] More recent examples include the reign of terror, from 1971 to 1979 of Idi Amin Dada, Ugandan President for Life [49] Pol Pot's reign of terror in Cambodia from 1975 to 1979, [50] and the notorious "dirty war" against "subversive elements" and the treatment of the "disappeared" by Argentina's military junta between 1976 and 1983. [51]

43. State terrorism in the form of "regime" or "government terror" is characterized by such actions as the kidnapping and assassination of political opponents of the government by the police or the secret service or security forces or the army; systems of imprisonment without trial; persecution and torture; massacres of racial or religious minorities or of certain social classes; incarceration of citizens in concentration camps; and, generally speaking, government by fear. It is quite obvious that almost all dictators and dictatorial or totalitarian and militarist regimes, as well as old-fashioned autocracies, have resorted to this form of State terrorism, which is, in essence, a misuse and an abuse of the powers of government, whether in the domestic or the occupied territory setting.

44. It is equally obvious that this form of State terrorism can also be deployed by a democratic government in a situation of "emergency", internal strife or civil war, in which overreactions to the dangers of terrorism and a cult of counter-terrorism tactics could result in the deprivation of individual freedom, the increase of potential government violations of human rights and, generally speaking, "terror from above", [52] with no one left to protect the public from intimidation and repression.

45. State terrorism in the context of "regime" or "government terror" is, then, a global phenomenon confined to no particular ideology or location. Even when trying to operate secretly, this type of bureaucratized terror intimidates, injures and abuses whole groups, sometimes whole nations, and it is the type of terrorism that historically and today produces the most harm. [53]

46. A further point that deserves particular mention is the role of the law in the reification and legitimacy of "regime" or "government terror". In fact, "regime" or "government terror" is exercised according to the law that the public authorities have themselves created. To put it differently, the organization and administration of terror-violence and coercion by the State against its population, a segment thereof or the population of an occupied territory usually involves its national or domestic law. It follows that official regimes which practise terrorism assert the legality of their activities drawing on well-recognized claims of legitimacy based upon national or domestic law. However, it is with regard to the very same law that the difficult question of the legitimacy of power and of resistance to oppression inevitably arises. [54] Hence the familiar terrorist cycle of action and reaction that permits each side to regard itself as the wronged party; in other words, the cycle of State and anti-State terrorism. [55]

47. It will also be noted that the use of terror by a State against its own population does not generally fit within the scope of "international" terrorism. [56] As a consequence, it does not prima facie come into the ambit of international law. Nonetheless, it is all too well known that, with the involvement of the United Nations in human rights matters constantly expanding and deepening, the treatment by a State of its own nationals is now viewed in the context of international human rights regulations. The principle of domestic jurisdiction as mirrored in article 2, paragraph 7, of the Charter[57] having increasingly eroded, as humanitarian concerns prevail over respect for a State's right to manage or mismanage its affairs, human rights issues are no longer recognized as being solely within the domestic jurisdiction of States. Accordingly, the basic duty of non-intervention in the domestic affairs of States has been subject to a process of reinterpretation in the human rights field since 1945, so that States can no longer plead it successfully as a bar to international concern and consideration of internal human rights situations.[58]

48. This evolutionary development has been further accelerated by the multiplication of the State's human rights obligations through the expansion not only of international human rights law but also of international humanitarian and criminal law. Thus, for instance, in the area of human rights, a wide-ranging series of international and regional instruments dealing with the establishment of standards and norms have limited the State's freedom of action and given birth to an ever expanding institutional framework of mechanisms for dealing with human rights violations. [59] Treaty provisions such as the prohibition of torture, genocide, slavery and the

principle of non-discrimination may now be regarded as having entered into the category of customary international law in the light of international practice, while other human rights provisions established under treaty may constitute obligations erga omnes for States parties.[60]

49. In situations of armed conflict, international law, by virtue of customary and humanitarian law, condemns State terror perpetrated in violation of the applicable provisions of the Geneva Conventions of 12 August 1949, relating to the protection of victims of armed conflicts, and of their two Additional Protocols of 8 June 1977. This is notably the case in the event of disregard for the rules of international humanitarian law protecting civilians, as well as the wounded and prisoners of war.[61]

50. From this perspective, it has been pertinently argued that State or government terror that is carried out in peacetime essentially raises human rights problems, whereas during wartime it involves problems relating to humanitarian law.[62] Nonetheless, it has also been convincingly maintained that the fundamental principles of international law recognized in the Charter of the Nürnberg Tribunal (the "Nürnberg Principles") should also be taken into consideration, since they too deal with terrorist acts in times of peace and of war.[63] In this respect, it is instructive to consider also the jurisprudence of the more recent international criminal tribunals for the former Yugoslavia and for Rwanda.[64]

(b) State-sponsored terrorism

51. Central to the deliberation of the important international dimensions of terrorism is the marked increase in the involvement of States in terrorism in pursuance of their immediate foreign policy goals. Thus, in recent years, a wider view of the concept of State terrorism has been taken in both the policy and the scholarly communities, a view that expands the scope of State terrorism to include any form of overt or covert support or assistance given by a State to terrorist agents for the purpose of subverting or destabilizing another State or its government.

52. State-sponsored terrorism occurs when a government plans, aids, directs and controls terrorist operations in another country. The activities may be carried out by individuals or by government officials.[65] As suggested by its very name, "State-sponsored terrorism" generally involves terrorist activities against one State which are "sponsored" by another State.[66] The sponsoring State benefits by distancing itself from the terrorist activity, since it can easily deny any involvement. The support of guerrilla insurgents in Mozambique and Angola by the Government of South Africa in the 1980s is a classic example.[67] Weaker States, however, have also employed the technique of sponsorship as a useful method of striking out at opponents who outgun them in terms of military strength.[68]

53. State-sponsorship of terrorism may take many forms ranging from moral and diplomatic encouragement to the supply of material assistance, such as arms and other equipment, training, funds and sanctuary to terrorists directly or indirectly controlled by the sponsoring State. For States targeted by State-sponsored terrorism, it can often be difficult to find the link that ties terrorists to their sponsors, and thus to bring the sponsoring State to be held responsible. As noted by a prominent commentator, this type of terrorism is characterized by "an almost impenetrable maze of linkages, intrigues, common and conflicting interests, including open and covert collaboration with foreign governments who preferred to stay in the shadows".[69]

54. The fact that State-sponsored terrorism encompasses such a variety of behaviours has led some commentators to further distinguish between "State sponsorship" and "State support" of terrorism, the latter implying a lesser degree of State involvement and control of the terrorists. Thus, according to this distinction, "State sponsorship" would refer to those situations where the State actively contributes to the planning, direction and control of terrorist operations, whereas "State support" would include situations such as tacit support, provision of transportation, permission for use of territory and financial support for terrorists.[70] As can be readily appreciated, however, the line between "State sponsorship" and "State support" of terrorism can be blurred in the practice of States. Moreover, because of the lack of precise legal content of these terms, there is major disagreement over what constitutes State sponsorship, support of, or involvement in international terrorism, what strategic, domestic or foreign policy goals are intended to be pursued by it, which States are involved in sponsoring or influencing terrorist groups, and how to evaluate the alleged evidence of State involvement.[71]

55. It should further be noted that State-sponsored terrorism is not a novel phenomenon nor a unique feature of the contemporary international landscape. It was an established practice in ancient times in the Oriental empires, in Rome and Byzantium, in Asia and Europe, and there are countless examples of it in modern history.[72] For instance, in the late nineteenth century, Russia provided support to revolutionary groups in the Balkans trying to set up Slavic States. During the First World War, Germany supplied arms to the Irish nationalists fighting British rule. In the twentieth century, numerous States have backed terrorist groups.[73] Nonetheless, it is only since the mid-1970s that this form of State terrorism has received increased international attention, when United States analysts first classed it as "surrogate warfare" and suggested that such sponsorship was a coherent programme undertaken by various Communist bloc and Arab States.[74]

56. Admittedly, there has been growing recognition among experts in the field that in an age of nuclear strategy and sophisticated technological means, State-sponsored terrorism, along with other forms of unconventional and "indirect warfare",[75] constitutes a particularly attractive mode of low-intensity warfare, allowing a State to strike at its enemies in a way that is easily deniable, clandestine, relatively cheap, high yielding and less risky militarily than conventional armed conflict.[76]

57. In the words of a specialist on terrorism, "State involvement that takes the form of sponsorship of terrorism may constitute the waging of secret or undeclared warfare against an adversary State ... [B]ecause of the dangers of military escalation in today's world of high technology, this form of so-called low-intensity conflict is becoming increasingly prevalent".[77] Other specialists, however, have warned against the labelling of terrorism as warfare and, in particular, against the categorization of State-sponsored terrorism as low-intensity warfare, or as "surrogate warfare" in the eventual interests of States at yet a further remove, arguing that such categorization confuses the essential nature of State-sponsored terrorism, which does not constitute a unitary phenomenon and a single type of conflict.[78] In the same line of argument, it has been convincingly maintained that equating State-sponsored terrorism with low-intensity warfare leads to military analyses and military solutions and, thence, to accompanying excessive use of force and interventionism, which may contribute to further destabilization and terrorism.[79]

58. It is undeniable that, as with domestic terrorism, the labelling of an act as one of State-sponsored terrorism depends largely on the political perspective of the labeller. Indeed, the boundaries of the term "State-sponsored terrorism" are often expanded to encompass almost any act of violence or threat of violence which suits the purpose of the labeller or, alternatively, are limited and skewed to take in only those acts with whose perpetrators or aims the labeller is at odds. As a respected commentator on terrorism has written, "[a]n act committed by an opponent State will be readily condemned as State-sponsored terrorism, whereas the same act committed by an ally (or one's own country) will be called something else, or justified, or simply not commented on".[80] Such propagandistic and explicitly politicized use of the concept of State-sponsored terrorism has not only contributed to the already existing general confusion (both accidental and deliberate) over the precise legal content of terms and labels relating to terrorism, but has also resulted in a wide range of nations being identified as terrorist sponsors, even where the evidence for it is not solid or lacks the necessary clarity. Conversely, political and economic considerations and pressures, and the realities of international relations, have often been the reasons behind the extreme reluctance of States to name others as terrorist sponsors, even in those cases where clear and solid evidence has existed.

59. This double-standard morality and the ensuing basic dishonesty that allows States to look for a State sponsor behind almost all acts of terrorism that are against their interests while themselves denying that there is any remote similarity in their own aiding of repressive regimes or revolutionary movements in other parts of the world, have stood in the way of objective analysis and understanding of the relation of State-sponsored terrorism to other forms of conflict between States. They have also led to misleading estimates of the threat that State-sponsored terrorism poses to both the domestic and the international society, and have often engendered unwarranted overreaction and counter-terror,[81] thereby increasing the terrorism-generating qualities of certain foreign policies and undermining the already vulnerable international democratic institutions or the balance of international relations.[82]

60. It hardly needs to be said in this context that State-sponsored terrorism raises many serious and difficult problems under different aspects or areas of international law, namely the law of armed conflict and humanitarian law, the law of responsibility and that of sanctions, including legitimate self-defence. Obviously, this is not the place to discuss these in any detail. Nor is it the place to consider tactics and measures adopted in response to State-sponsored terrorism.[83] For present purposes, it suffices to focus attention on the repudiation of State-sponsored terrorism of all varieties contained in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970 - an instrument that is regarded as an authoritative interpretation of broad principles of international law expressed in the Charter and which marks an important development in the area of international law pertaining to international terrorism.[84]

61. This significant international instrument establishes in principle 1 (containing the basic prohibition of the use of force in international relations) the duty of every State to refrain from "organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State" and, further, the duty of every State

to refrain from "organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts". Moreover, it asserts in principle 3 (containing the basic prohibition of foreign intervention), that "no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State".[85]

(c) International State terrorism

62. While the concept of State terrorism usually refers to regime or government terror in the domestic or occupied territory setting (as already described under (a) above), or to current international political terrorism that is State-sponsored or State-directed (as explained under (b) above), it is necessary to note, for reasons of completeness, an even wider view of this concept which is sometimes taken in the international relations scholarly community and in debates within the framework of the United Nations. This view does not simply expand the scope of the concept of State terrorism from the domestic to the international plane but enlarges it still further to a degree that would include - and literally amount to - the resort to force in international relations.[86]

63. Thus, starting from such premises as that "[t]he State ... is as much a user of terror in its international affairs as in its domestic activities",[87] some international relations scholars have argued that coercive diplomacy and other overt State behaviour such as resort to the application of terror tactics in international relations (i.e. reprisals and bombing raids designed to produce damage and instil fear or, alternatively, the show of force or use of force as employed in the cold war period by the two super-Powers within their respective spheres of influence, nuclear deterrence and the "balance of terror") are cases of (international) State terrorism, whether in war or non-war situations.[88]

64. The same enlarged concept of State terrorism has been taken by some State representatives when discussing issues of terrorism in the relevant organs and bodies of the United Nations and is, therefore, reflected in official documents along with the record of debates. Thus, for instance, the 1973 report of the Ad Hoc Committee on International Terrorism refers to this concept of State terrorism endorsed by a number of States, in the following terms:

> "terror inflicted on a large scale and with the most modern means on whole populations for purposes of domination or interference in their internal affairs, armed attacks perpetrated under the pretext of reprisals or of preventive action by States against the sovereignty and integrity of third States, and the infiltration of terrorist groups or agents into the territory of other States".[89]

65. There is, however, strong disagreement in both the policy and the scholarly communities over such an expansion of the concept of State terrorism, an expansion which, in turn, has an impact on the already overloaded term "terrorism" to the point where it becomes unmanageable.

In the words of a learned commentator who shares this view:

> "every type of objectionable act - or arguably objectionable act - that a State may take on the international level, including military manoeuvres and war games in the vicinity of another State which present a threat to that other State, the transport of nuclear weapons through the territory of other States and international waters and the development, testing and deployment of nuclear and space-weapons systems".[90]

are not manifestations of State terrorism, nor is such an "unwarranted" extension of the concept of "terrorism" generally held.[91]

66. Without regard to one's view of the extent to which State activities such as those mentioned above do or do not qualify as State terrorism, the Special Rapporteur would like to recall at this point that recourse to war and the prohibition of force are governed by international law. As is well known, the basic notion embodied in the Chapter of the United Nations is that the threat or use of force is prohibited in international relations (art. 2, para. 4), unless undertaken in self-defence (art. 51) or in terms of the exception provided for in the final sentence of the domestic jurisdiction clause (art. 2, para. 7). It is, moreover, well-understood that the "illegal" use of force in international relations will be considered under customary international law, international human rights and humanitarian law, the law of armed conflict and international criminal law. It could result in individual criminal liability for the leading policy makers and engage as well the responsibility of the State.

67. Of course, this is not the place to go into this matter in any detail. It is sufficient for our purposes to specify at this juncture the following considerations. (a) While war is not necessarily, or even normally, a species of terrorism, belligerent practices and threats may be. (b) Terrorist acts can be committed by States against States, in both war and non-war situations. (c) State-sponsored terrorism in the modern world can, indeed, take many forms, and does not only consist of the assisting or directing of terrorist groups abroad but of other types of terrorist attacks also.[92] This factual situation, coupled with the current inconsistencies and imprecisions in the terminology used by both commentators and policy makers, often results in confounding the boundaries between (international) State terrorism and State-sponsored terrorism.[93] (d) From the legal point of view, the distinction between (international) State terrorism and State-sponsored terrorism is immaterial, since the invocation of either one of them would have exactly the same results (i.e. identification of the violated international law norms, articulation of charges reflected in the relevant international law norms, renunciation of alleged behaviour, etc., and the attendant question of responsibility).

4. Manifestation of sub-State (or individual) terrorism

68. In contrast to the phenomenon of State terrorism stands the phenomenon of sub-State (or individual) terrorism, which is much more diverse in the forms it takes. As is well known, scholarly concern and the vast bulk of the literature on the subject of terrorism has until now concentrated primarily on this type of terrorism, which embraces the anti-State terror tactics of individuals and groups large and small, nationalists, separatists, liberation fighters, and so on.[94]

69. On the diversity of sub-State (or individual) terrorism, one of the leading scholars on terrorism has written pertinently:

> "Terrorism, interpreted here as the use of covert violence by a group for political ends, is usually directed against a government but is also used against other ethnic groups, classes or parties. The aims may vary from the redress of specific grievances to the overthrow of a government and the seizure of power, or to the liberation of a country from foreign rule. Terrorists seek to cause political, social and economic disruption, and for this purpose frequently engage in planned or indiscriminate murder. Terrorism may appear in conjunction with a political campaign or with guerrilla war, but it also has a 'pure' form. It has been waged by national and religious groups, by the left and the right, by nationalist as well as internationalist movements, and it has been State-sponsored ... Terrorist movements have frequently consisted of members of the educated middle classes, but there has also been agrarian terrorism, terror by the uprooted and the rejected, and trade union and working-class terror ... Terror has been directed against autocratic regimes as well as democracies; sometimes there has been an obvious link with social dislocation and economic crisis, at other times there has been no such connection".[95]

70. As the above citation clearly shows, this dimension of terrorism is so disparate and vast that it is difficult to reduce and comment on it here in a manageable way. In addition, some of its aspects are extremely controversial, with many diverse and contending points of view. In her previous work, the Special Rapporteur has already drawn the attention of the Sub-Commission to a number of problems of sub-State terrorism in relation to international and human rights law which need to be carefully examined, stressing especially the question of the accountability of non-State actors.[96] She has also received a number of submissions from Governments and non-governmental organizations, some important ones arriving too late to receive the attention they are due and at a time when the size limitation placed on progress reports has already been surpassed. At this point, the Special Rapporteur is convinced that further review of and reflection on this topic would better serve its examination. Accordingly, she will postpone the discussion on the manifestations of sub-State terrorism to a later stage, in order to present it in a more integrated form.

C. Lessening the controversy: the necessity to distinguish terrorism from armed conflict

71. In seeking a definition of terrorism it is essential to set out the difference between armed conflict and terrorism.[97] The Special Rapporteur recognized from the beginning of her work that this issue has been quite contentious in the international community, as illustrated by the oft repeated phrase "one person's terrorist is another person's freedom fighter".[98] Concerns have been raised by many States about wars of national liberation in the context of the right to self-determination.[99] These States are determined not to allow the terrorism debate to encroach unduly on this fundamental principle.[100] Others have focused on what is increasingly called "ethnic conflict" or even "nationalist/separatist conflict", even at times giving the impression that any conflict described with those labels is necessarily related to terrorism. The debates in the framework of all United Nations organs and bodies reflect these concerns. However, the

Special Rapporteur notes the almost total absence of any legal analysis of these critical areas in the international dialogue. As a consequence, she thinks that it is time to address this issue, because without the clear separation of war and terrorism, there will be no meaningful progress towards a definition of terrorism and, more importantly, no chance to implement meaningful measures to combat terrorism.

72. An obvious reason to distinguish clearly armed conflict from terrorism is because the law of armed conflict (and humanitarian law) automatically comes into effect when there is an armed conflict. This body of law has long-settled definitions, as well as clear obligations, regarding all aspects of military conduct involving both military operations and weaponry (The Hague law) and the protection of victims of armed conflict (Geneva law).[101] Under the law of armed conflict, acts of war are not chargeable as either criminal or terrorist acts. Most importantly, there are clear obligations regarding their enforcement, not the least of which is to respect humanitarian law in all circumstances.[102] Thus it is necessary to distinguish war from terrorism and acts of war from acts of terrorism.

1. Armed conflict and terrorism

73. Armed conflict is a situation where two or more parties armed with military materiel engage in military operations (acts of war) sufficient to meet the customary definitions of armed conflict. What is sufficient in terms of military operations varies depending on whether the conflict is an international armed conflict or not.[103]

74. There is scant guidance in customary humanitarian law regarding the degree of military activity required to constitute an international armed conflict and, hence, to entail the automatic application of international armed conflict law to the situation. However, practice seems to indicate that even very little military aggression on the part of one State against another State is viewed as being sufficient. Most military aggression, however, is quite overt and, although a declaration of war may not be made, the international community is aware that there is an armed conflict.[104]

75. In the case of armed conflict "not of an international character occurring within the territory" of a State (in the terms of common article 3 of the 1949 Geneva Conventions), article 1.1 of the 1977 Protocol Additional to the 1949 Geneva Conventions, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) rounds off the vagueness of common article 3 of the Geneva Conventions and supplies the criteria of military action sufficient to define non-international armed conflicts (otherwise, "internal" or "civil" wars). Article 1.1 provides that Protocol II applies to all armed conflicts which take place in the territory of a State between its armed forces and dissident armed forces or other organized armed groups in sufficient control over a part of its territory as to enable such groups to carry out sustained and concerted military operations and to implement Protocol II.[105] Like common article 3 of the 1949 Geneva Conventions, Protocol II does not apply to situations of internal disturbance and tension, such as riots, isolated and sporadic acts of violence and other acts of a similar nature (which are not deemed to be "armed conflicts").[106] At lower levels of violence, the distinction between "armed conflicts" and internal disturbances is not free from difficulty, and yet it is also open to abuse.

76. A particular war may arise in an ethnic context - hence the currently popular term "ethnic conflict". Nevertheless, the situation is still a war governed by humanitarian norms and is either a civil war or an international war - which in the case of the "ethnic conflict" label is more than likely a war of national liberation. Similarly, a particular war may arise in a "national/separatist" context; like an "ethnic conflict", it is nonetheless governed by humanitarian law.[107] The popular use of these terms cannot legally annul the obvious application of humanitarian law to the combatants in these armed conflicts.

77. For purposes of determining if a situation is an armed conflict or terrorism, it is rarely necessary to decide whether an armed conflict is a civil war or one in which a group with a claim to self-determination is fighting for national liberation. Many groups engaged in armed conflict claim the right to self-determination. Legal and factual analysis may or may not support such claims. However, if there is armed conflict sufficient to invoke humanitarian law, then humanitarian law has to be applied.[108] Where the international community will have political difficulty is not as to whether there is a war or terrorism, but in determining what type of armed conflict it is. This legal/political controversy, however, belongs not in the debate on terrorism but in debates on which provisions of humanitarian law apply - those governing civil wars or those governing wars identified in article 1.4 of Additional Protocol I.[109] That debate would have to take into account, of course, the principle of self-determination, as set out in the Charter of the United Nations, human rights instruments and resolutions, with regard to the armed conflict in question. Legitimate concerns, raised by the OIC and others in many forums, that the attempt to define terrorism could result in an erosion of the principle of self-determination, could be favourably addressed in the framework of humanitarian law.

78. This is not to say that a situation which is clearly an armed conflict between either two governments, or a government and a group engaged in armed conflict in the defence of its right to self-determination, or a group meeting the test for civil war may not also generate groups unaffiliated with the combatant forces that engage relatively exclusively in terrorist acts. Thus, there may be groups that could be called terrorist groups whose acts may arise from a political position regarding the armed conflict, but who are, for want of a better term, acting outside the armed conflict.

79. Requiring rigour in these determinations does not mean that all acts undertaken in the course of armed conflict are legal acts of war. Humanitarian law identifies acts that are prohibited under the laws and customs of war and, hence, are chargeable as illegal acts. Customary international law, as well as the Geneva Conventions and their Additional Protocols identify those illegal acts that are considered especially serious international crimes when taking place in armed conflicts.[110] While there is no mention of terrorist acts in the 1907 Hague Convention and Regulations or the 1949 Geneva Conventions, specific mention of a prohibition of terrorism as a method of warfare is made in Additional Protocol II, article 4.2 (d). Additional Protocol I, article 51.2 prohibits war-time "acts or threats of violence the primary purpose of which is to spread terror among the civilian population". It makes no legal sense to focus solely on terrorist acts carried out by combatants in the context of armed conflict and to disregard other acts that also violate the rules of war at the same level of gravity. Allegations of any and all violations of the rules of war should be made in the context of applicable armed conflict law, its enforcement provisions and all the protection and guarantees they provide.[111]

80. There is sometimes an obvious reluctance among States to take seriously and impartially their obligations under the enforcement provisions of humanitarian law instruments. This might be one of the reasons why debate regarding certain armed conflicts is sometimes shifted to debate on terrorism. In any case, the Special Rapporteur notes that in the cases of the former Yugoslavia and Rwanda there has been concerted international effort to address violations of the parties in an impartial way.[112] It remains to be seen how the International Criminal Court, once it is established, will improve the overall situation.[113] Regardless of the status of the Rome Statute, existing international humanitarian law rules provide that any State may seek out and try alleged violators of the laws and customs of war in its national courts or turn such persons over for trial in another State, provided that they do so with impartiality and in proceedings that meet minimum standards.[114] Whatever the perceived gain that may be behind States' unwillingness to do this and address wars as wars, the removal of some of the current armed conflicts from the terrorism debate would be a major gain in the potential for progress in defining and acting on reducing terrorism.

81. There remain, however, cases where there may be political or other difficulties in determining whether a situation is an armed conflict or terrorism. Thus, for example, in the context of article 2 common to the Geneva Conventions, which provides that humanitarian law applies in all cases of partial or total occupation of territory "even if the said occupation meets with no armed resistance", the following situations may be envisaged. (a) A situation where there has been long-time acquiescence to an occupation but where the occupied people subsequently try to restore or gain their claim to self-determination to the point of taking up arms. Their military actions may be few in number, or relatively ineffective - in other words, not meeting a minimum definition of armed conflict. The occupying power may, then, invoke its long occupancy as proof that its occupation is legitimate and characterize any and all use of force against it as terrorism.[115] (b) There is a situation of nascent civil war - i.e., a situation where there are armed groups who either do not control sufficient territory, or who engage in military activities that are more than sporadic but less than sustained, or whose actions do not qualify as military actions under the laws and customs of war. The group may or may not claim the right to self-determination, but if so, the claim may be, at best, dubious.[116] (c) In yet another situation, a group with a strong self-determination claim may use force, but almost exclusively in ways that clearly violate the laws and customs of war. With regard to the above situations, it can be argued that, in the first, characterization as terrorism could be incorrect, while in the second it could be correct. In the third situation, the perpetrators of acts that violate the laws and customs of war could be charged under applicable humanitarian law provisions or even anti-terrorism laws applicable in the given situation. It goes without saying that, in any event, the peoples' underlying self-determination claim remains intact.

III. CONTEMPORARY FORMS OF TERRORISM

82. Resolutions adopted by the Commission and Sub-Commission have indicated their concern over the possible exploitation of new technologies by terrorist groups. The Special Rapporteur recognizes the importance of the wide-ranging debate being carried on among academics, policy makers and non-governmental organizations on contemporary forms of terrorism. While such ill-defined labels as "superterrorism", "catastrophic terrorism", or "megaterrorism" are used with increasing frequency to describe manifestations of political violence that have arisen in the past 10 to 20 years,[117] it is essential to disaggregate the elements

grouped under these rubrics in order to achieve analytical clarity with regard to the actors and forms of violence. At first reading, the Special Rapporteur leans towards the view that (i) the plausibility of the threat must be grounded in the practicalities of the act, not in worst-case speculation; and (ii) that much of what is being described as terrorism could in fact also be categorized as non-terrorist activity.[118] These conclusions should be taken into consideration if a realistic account is to be made of possible solutions to the problems of human rights and contemporary forms of terrorism.

83. In studying this topic, the Special Rapporteur notes that most of the literature relating to it is by political scientists or sociologists and other scientists, not lawyers or human rights specialists, and is presented in a factual or speculatively factual way rather than as legal analysis. For this reason, the Special Rapporteur's discussion has to depart from her usual form of legal analysis. Thus, she begins by examining possible terrorist use of weapons of mass destruction (WMD) as this is the form of new technology that generates the most commentary. She then comments on the role of new information technologies in contemporary terrorism, giving special attention to the concept of "cyberterrorism". Other issues relating to new technologies may be presented at a later stage in her work.

A. Weapons of mass destruction and terrorism

84. The spectre of the terrorist use of WMD is unquestionably frightening. Apocalyptic depictions of hundreds of thousands of gruesome deaths caused by the detonation of a nuclear weapon or the release of anthrax in an urban area abound in the literature and are frequently invoked by States to justify counter-terrorist policies.[119] Precisely because of the potentially grave implications that both the terrorist use of WMD and counter-terrorism policy hold for the enjoyment of human rights, it is essential to consider carefully the reality of the threat and the efficacy of the counter-strategy.

1. Chemical weapons

85. Chemical weapons have existed for most of the twentieth Century. They can take liquid or gaseous forms and are generally separated into four categories: blister agents such as mustard gas; blood agents such as hydrogen cyanide; choking agents such as phosgene and chlorine; and nerve agents such as sarin, VX, tabun and soman.[120] Nerve agents are the most deadly as they block the enzyme cholinesterase, effectively short-circuiting the neuromuscular system and killing the victim almost immediately,[121] and are also of most interest to a group or individual intending to kill large numbers of people.

86. The technical feasibility of the terrorist use of chemical weapons can be broken down into two areas: production and delivery. While all the ingredients and equipment needed to produce chemical weapons are dual-use and most are readily available through commercial dealers,[122] the actual production of such weapons presents difficulties. Although estimates of the amount of experience needed to produce chemical weapons range from a high-school knowledge of chemistry to extensive post-graduate work, most experts agree that some graduate education is necessary to produce nerve agents, for example, safely in large quantities.[123] Estimates of the

cost of setting up a functioning nerve agent production plant similarly range widely, from US$ 20,000 to US$ 20 million.[124] The only effort to regulate the export of dual-use equipment and chemical precursors has been that of the 30 countries comprising the Australia Group, whose effort must be expanded and intensified if it is to function effectively.[125]

87. Nerve agents can be delivered by many devices, from bombs to sprayers to punctured plastic bags. Most experts agree that the only effective way of distributing nerve agents over large areas outdoors is via aerosolization, a means that requires high levels of technical skill and is easily disturbed by environmental conditions.[126] Moreover, even under optimal conditions, "hundreds to thousands of kilograms" of agent are necessary per square kilometre.[127] An outdoor attack would likely kill no more than several hundred people. At best, dispersing the agent inside a building might kill a few thousand. Thus, for terrorist use a chemical weapon would do nothing that a conventional bomb could not do more easily and with more certainty.[128] The amounts necessary would take months or years to produce in any but the largest production facilities.[129]

88. The experience of the Aum Shinrikyo cult in Japan provides insight into the problems for potential terrorists of using chemical weapons. Aum executed two effective nerve agent attacks: the 27 June 1994 sarin attack in Matsumoto, Japan, that led to seven deaths and 144 persons being injured and the 20 March 1995 sarin attack on the Tokyo subway that left 12 dead and over a thousand injured.[130] At its peak in 1995, Aum had 40,000 members worldwide, with total assets reported as ranging from tens of millions to 1.4 billion United States dollars.[131] Their membership included a number of young scientists and technicians, and Aum had established an international network to obtain chemicals and equipment. Despite their massive funds, infrastructure, skills and apparent determination to produce mass casualties, their nine attempts at using biological weapons were unmitigated failures. They then switched to chemical agents and conducted their two deadly attacks. However, neither produced deaths on the scale that is usually cited in the WMD terrorism literature or, indeed, that Aum had hoped for. The delivery methods were crude: in the first attack, a large fan and a heating element, and in the second, punctured plastic bags. Even Aum, the paradigmatic example of a terrorist group using chemical weapons to cause mass casualties, could not surmount the technical obstacles to do it.[132]

2. Biological weapons

89. Biological weapons are exponentially more deadly than chemical weapons but, fortunately, also more difficult to produce and deliver.[133] Biological weapons are generally separated into four categories: bacteria, including anthrax and plague; viruses, including yellow fever, Ebola, and Venezuelan equine encephalitis; rickettsiae, including Q fever; and toxins, including ricin and botulinum toxin. Some are communicable, and many have an incubation period, making them hard to diagnose and counteract.

90. In terms of production, the acquisition of seed cultures is the most difficult obstacle. While some cultures could in the past be ordered legally from international collections, export controls are now being more strictly enforced.[134] Growth media and equipment are relatively easy to obtain. As with chemical weapons, estimates of the technical knowledge needed to

produce biological weapons range from a basic knowledge of biology to years of post-doctoral work, though again it is generally agreed that some graduate-level experience is required. The total cost of building a small biological weapons production facility might range from US$ 200,000 to 2 million. There are several trade-offs involved in production: while wet agents are easier to produce, they are much less effective than dry agents, and the more pure an agent is, the less stable it is.[135] Doctors and medical researchers generally cite anthrax, plague, smallpox, and botulinum toxin as the most probable candidates for use by terrorist organizations.[136]

91. Because of the extreme sensitivity of biological agents to environmental factors like sunlight, humidity and temperature, they are very difficult to deliver effectively in large quantities.[137] The creation of a respirable aerosol represents the most difficult technical challenge, as was evident in Aum's series of failures at spreading anthrax through aerosolizers.[138] In fact, there has never been a biological weapons attack by a terrorist that resulted in more than one death,[139] testament to the inherent difficulty of producing and delivering a biological agent over a large area.

3. Nuclear terrorism

92. Experts generally agree that the acquisition and use of nuclear weapons by terrorists is less likely than the possible use of chemical or biological weapons. Although stories abound of the smuggling of stolen nuclear weapons, including the notorious "suitcase bombs", there has been no confirmed sale of a nuclear weapon and no non-State actor has ever been confirmed as possessing a nuclear weapon, let alone detonating one.[140] Still, the problem of "loose nukes", as it has been termed, requires a concerted multilateral effort to account for nuclear weapons and to put them under safeguards.[141]

93. Those, groups or individuals, who cannot obtain a ready-made nuclear weapon could try to construct one themselves, although this would require a high level of technical knowledge and the acquisition of a suitable amount of weapons-grade, or at least weapons-usable, fissile material, either highly enriched uranium (HEU) or plutonium.[142] Although rumours likewise abound around the putative market for nuclear materials, there has not been a single case involving enough material to actually make a bomb.[143] Some experts even question the existence of a demand for fissile material or nuclear weapons.[144] The most difficult manner of obtaining a nuclear weapon is to produce one's own HEU in a reactor. The prime example of a clandestine project of this sort is South Africa, where the total cost was nearly US$ 200 million.[145] The cost of a project that had obtained fissile materials would be much lower.

94. Other possible forms of nuclear terrorism may include the use of radiation-dispersion devices, radiological weapons that utilize more easily obtained non-fissile radioactive isotopes to disperse a powder of radioactive materials. Although generally considered impractical for standard military use, they could be useful for instilling terror in a population even if the casualty count would probably be quite low.[146] Another potential form of nuclear terrorism is the sabotage of nuclear reactors. Chechen rebels, for example, have repeatedly threatened to do this in Russia, and some experts consider this to be the most plausible form of nuclear terrorism.[147]

4. Potential use of weapons of mass destruction

95. Most chemical biological and nuclear weapons have existed for decades. Terrorism is a phenomenon with a centuries-longer history. It has been suggested that in the recent explosion in writing and policy-making concerning the possibility of their combination, the Aum Shinrikyo subway attack was the most important catalyst, as it represented the first significant instance of the terrorist use of WMD in a modern urban environment.[148] Suddenly, the debate was transformed from "will it happen?", to "when will it happen again?", as experts assumed that terrorists' normal fondness for mimicry would lead others to attempt similar attacks. In addition, new interest in alleged biochemical weapons programmes and concern over vulnerable nuclear, chemical and biological weapons stockpiles[149] in the hands of certain Governments gave rise to the fear that WMD were more easily available, either from "State sponsors" or on the black market.

96. But the question of why terrorists would use WMD remains. In the oft-quoted phrase of a well-known expert on terrorism: "terrorists want a lot of people watching, not a lot of people dead".[150] That is to say, terrorists are cognizant that an extremely lethal WMD attack could alienate their supporters or cause a fatal counter-attack by the Government. Moreover, terrorists might be fearful of handling and using such dangerous substances themselves, and might consider conventional weapons as satisfactory for their needs.[151] In the face of this orthodoxy, two arguments are generally made by experts and policy makers to support the possibility of the terrorist use of WMD. First, many point to the "increasing lethality" of terrorist attacks and, extrapolating from the trend, argue that terrorists will turn to WMD as they become more familiar with their deadly capacities.[152] Second, many have sketched out the portrait of a "new breed" of terrorists who, breaking from the traditional terrorist mould, are willing to use WMD. This new breed is variously characterized as "nihilistic", "religiously-oriented", "fanatical", "fundamentalist", "apocalyptic", "ethnic" and always "extremist".[153] These new actors' other-worldly orientation and lack of concrete political objectives release them from the restraints of orthodox terrorists and they are willing to use WMD to carry out their agenda of mass destruction.

97. The Special Rapporteur believes that it is essential to avoid falling prey to alarmist analyses of the potential for WMD terrorism and, hence, becoming complacent towards the possible violations of human rights that can easily accompany a counter-terrorist strategy premised on these dire warnings. Some of the technical obstacles to obtaining and utilizing WMD were outlined earlier. Even if these obstacles are overcome, the evidence still speaks against the possibility of an imminent WMD attack by terrorists. Worldwide in the last 25 years, there have only been five WMD attacks by terrorists that caused 10 or more deaths (the most being only 19) and all used chemical weapons with "low-tech" delivery methods.[154] In total, according to one source, from 1975 to July 2000, there were two fatalities and 752 injuries due to the terrorist use of biological weapons, and 150 fatalities and 2,492 injuries due to chemical weapons.[155] These data are clearly dwarfed by the hundreds of deaths caused by many conventional terrorist attacks.

98. All this does not mean, of course, that these numbers are trivial, or even that the probability of a future slide to mass destruction terrorism is unlikely and, therefore, should not capture our attention. It only means that the link between the recent increased lethality of terrorist attacks and the use of WMD appears questionable. Indeed, this increased lethality has not been a result of the use of WMD but rather of a string of deadly conventional terrorist attacks, such as the 13 simultaneous bombings in Bombay in 1993, the 1995 bombing of the Federal Building in Oklahoma City and the 1998 bombing of the United States Embassies in Nairobi and Dar-es-Saalam. Further, experts in the field have convincingly argued that an analytic distinction should be drawn between the small-scale use of WMD in tactical attacks and the use of WMD for the purpose of mass destruction.[156] Be that as it may, this is not the place to speculate in more detail on the potential use by terrorists of WMD. The Special Rapporteur thinks that given the serious doubts about the likelihood of imminent use of WMD by terrorists we should be wary of overinflating the dangers of "catastrophic", "postmodern" terrorism or "superterrorism", which carry with them potential justification of counter-terrorist machinery with the associated potential infringements upon civil liberties and human rights. For example, the threat of WMD could lead to the invoking of stringent restrictions and an increase in police powers. These and other adverse effects of a climate of fear (engendered by the fear of terrorism) can prompt a reduction of human rights as readily as an actual terrorist presence.[157]

B. Terrorism and new information technologies

99. There are a number of delineations that must be made concerning the rhetoric surrounding contemporary forms of terrorism and the new information technologies (NIT). First, NIT can be used by terrorists or other groups for organizational purposes and as a means of disseminating their own information. This use of NIT can give rise to new network forms of organization that are especially useful for terrorists, criminals and other organizations working in opposition to States.[158] The all-channel network is especially effective, as it allows for an organization that is cemented ideologically and linked by constant information flows from every node to every other node, while not presenting any single privileged point at which the enemy can attack. E-mail, Web pages, bulletin boards, fax machines and cellular telephones provide the technical infrastructure for these new forms of organization and also provide ways for small groups with few resources to disseminate their information throughout the world instantly. It must be made clear that the use of NIT by terrorist groups for propagandistic or organizational purposes may not necessarily qualify as terrorism itself, unless it meets legal standards for incitement.

100. The use of NIT as a destructive tool has become popularized under the name "cyberterrorism". But, just as the use of NIT for propagandistic purposes may not be terrorism, so many uses of NIT for disruptive or destructive purposes may not be terrorism either.[159] Thanks to the rapid spread of the Internet, would-be hackers around the world have a wealth of tools at their disposal, ranging from notorious viruses to such lesser-known weapons as "logic bombs", "worms", and "Trojan horses".

101. Moreover, as personal computing capacities have increased dramatically over the last decade, hackers can launch multinational coordinated attacks upon computer systems, breaking in and crashing networks, destroying data, and shutting down systems dependent upon computer networks. While a number of different categories of actions fit within this framework, they do

not all fit under the rubric of "cyberterrorist". The Special Rapporteur would reserve the label of cyberterrorism for those acts whose intention is to cause disruption or destruction sufficient enough to terrorize the population. Oft-cited examples of this are attacks upon air traffic control systems, the commandeering of weapons systems and the disruption of emergency medical communications. Actions of this sort seem indeed to qualify as the use of NIT for terrorism, but the label should not be allowed to spill over onto other classes of actions. Further, it should be noted that, despite the alarmist rhetoric, amongst the reportedly thousands of attacks by hackers which major computer systems face daily, to date there has been no confirmed report of a cyberterrorist attack. In fact, many experts deem such an attack as extremely unlikely, because of its difficulty and potential inefficacy.[160]

IV. THE IMPACT OF TERRORISM ON HUMAN RIGHTS

102. Terrorist acts, whether committed by States or non-State actors, may affect the right to life, the right to freedom from torture and arbitrary detention, women's rights, children's rights, health, subsistence (food), democratic order, peace and security, the right to non-discrimination, and any number of other protected human rights norms.[161] Actually, there is probably not a single human right exempt from the impact of terrorism.

103. In its resolutions 1999/27 of 26 April 1999 and 2000/30 of 20 April 2000, the Commission requested the Special Rapporteur to give attention to the questions presented in these resolutions: certain human rights, concern for the victims, concern that counter-terrorist action may not fully comply with international human rights standards, and special concern about hostage-taking, kidnapping and extortion. The Commission's resolution 2001/37 of 23 April 2001, is essentially identical on these points to the two aforementioned resolutions. It is also worth noting in this context that during the preceding debates many statements by Governments as well as non-governmental organizations drew particular attention to the curtailment of procedural rights provided in international human rights instruments in cases of persons charged under national anti-terrorism laws. As usual, there was a large divergence of views expressed regarding the issue of non-State actors. Accordingly, the Special Rapporteur will now attempt to address some of these questions, although, regrettably, briefly owing to the size constraints on reports.

A. Direct impact

1. General concerns

104. In her review of terrorist hostage-taking, kidnapping and extortion carried out by terrorist groups, the Special Rapporteur has found that these acts are mostly carried out by known groups who predominate in only a few areas. The political issues involved in these areas are also well known. In the context of a study on terrorism and human rights, it is difficult to know what the Commission wishes of the Special Rapporteur regarding these acts except to note again that there have been few new instances of new groups engaging in them. This does not mean that such acts may not be committed in the future in other areas by new groups, but it is difficult if not impossible to predict where they might occur. Criminal liability for these acts remains a concern of national and existing international law, including the requirement of international cooperation in apprehending persons alleged to have engaged in such acts.

105. The Commission has also expressed its concern about rape by terrorist groups. In this connection, the Special Rapporteur draws attention not only to the work of the Commission regarding violence against women and the work of the Commission's Special Rapporteur on violence against women, its causes and consequences, but also to the relevant work of the Sub-Commission and of its Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict.[162] The Commission has already resolved that rape by non-State actors constitutes a violation of the rights of women.[163]

106. States have an affirmative duty to promote and protect the human rights of all persons under their jurisdictions. While this is a basic tenet of human rights law, it is important to recall it here as both the Commission and the Sub-Commission have stressed this point in the context also of terrorism.[164] States that resort to State terrorism, whether international or internal, grossly violate the basic concepts of human rights. Such States should be subjected to both international condemnation and international action in the light of instruments and mechanisms of human rights and, where applicable, humanitarian law. Such action, if effective, would greatly diminish incidence of terrorism today.

107. When terrorist acts or threats of terrorist acts by non-State actors threaten the lives and safety of persons under a State's jurisdiction, it is the responsibility and the duty of the State to protect those persons. A State's minimum response should not be limited to proscribing terrorist acts in its criminal law system or in the training of local and national law enforcement or military personnel. Such a response would be, in the Special Rapporteur's view, too narrow and limited, and would not result in meaningful protection from terrorist acts. A State must also undertake a thorough study of all aspects of terrorism, including causal factors and the implications of its foreign and domestic policies in the light of international law (especially in terms of human rights) that have generated a risk of terrorist acts being committed against its citizens or persons under its jurisdiction.[165] Were all States to do this in an unbiased way, and then adopt meaningful responses - which may or may not require changes in policies - the incidence of terrorist acts by non-State actors would also dramatically decline.

108. Unfortunately, some States consider that to focus any attention on the causes of terrorism has the undesired effect of generating sympathy for, if not the terrorist acts, at least, the context in which they arise. Public opinion may then be rallied to pressure a State to change a policy that it does not want to change, even at the cost of increased fear of terrorism. Additionally, some are of the opinion that focus on the causes that might result in changes of policy could be viewed as giving in to terrorist demands. Even so, States are sometimes obliged to change policies that contravene international law. Yet this is not viewed as giving in to terrorist demands, in spite of the fact that a terrorist group may seek those very changes.

109. Sometimes, a State may utterly fail to protect its people in an effective way from acts of terrorism. In these situations, one could say that the State is either unable (incapable) or unwilling - or both - to control those acts. The State, then, has effectively reneged on its affirmative duty to protect its own people. Such a State, in these situations, can itself be liable for acts carried out by non-State actors.[166] On the other hand, a State's over-response to

terrorism can also effect human rights. Thus, the Commission has repeatedly expressed concern over counter-terrorist measures, as evinced in its latest resolutions on human rights and terrorism that state yet again that measures to counter terrorism must be in strict conformity with international human rights law.[167]

110. In this context, the rights to freedom of speech, association, belief, religion and movement, and the rights of refugees are particularly vulnerable to undue suspension in the guise of anti-terrorist measures. This may sometimes occur when individuals or groups in a State express support for a political position that is in opposition to the government's position but conforms with that espoused by a group labelled as terrorist.

111. It should, finally, be noted that a number of States either have or are in the process of enacting anti-terrorism legislation which is frequently criticized by legal scholars and human rights defenders.[168] Some of this legislation contains no definition of terrorism, while some contains lists of certain acts. Some of it includes provisions in which groups are put on an official terrorist list, frequently with no analysis of the particulars of the situation or the nature of the group. Those groups and others espousing similar views but uninvolved with the groups concerned may face severe consequences. As will be set out below, judicial proceedings to challenge this false labelling or to defend a person charged with an offence under such anti-terrorism legislation may leave room for serious negation of a wide range of procedural rights.

2. Special note on judicial process rights

112. The Special Rapporteur has reviewed a number of national laws regarding terrorism and the comments of States that have responded either to the initiative of the General Assembly or to this study.[169] While some national laws take full account of international human rights norms, others do not in very significant ways. Accordingly, she thinks it should be of high interest to set out some of the situations that could give rise to a serious possibility of misuse and abuse of defendants' rights.[170]

113. In some States, detained persons considered as terrorists may be denied visitation rights.[171] This can include the denial of access to a defendant's own attorney, or such severe restriction of access to counsel, including the constant presence of State officials in attorney-client sessions, as to reduce the right to counsel to a nullity. The defendant is held, essentially, incommunicado.

114. States may have special procedures that allow identity checks, house-to-house searches and other acts that have implications for both privacy rights and fair trial provisions.[172] The State may lower the standard for a warrant, for example, or eliminate the need for a warrant at all. Not only a defendant but also large numbers of uninvolved persons may be subjected to serious encroachment on their rights, especially with house-to-house searches and other intrusions into privacy.

115. Some States have provisions that affect the actual judicial proceedings. For example, persons accused of terrorist acts may be limited in the number of witnesses that may be called, or may even be denied any witnesses at all. This can seriously impair any attempt by a defendant to prove he or she has no association with a particular group considered to be terrorist, or had nothing to do with a particular act. This could be of great importance if the person is charged not with a terrorist act directly but under group liability statutes.

116. A defendant may also seek to prove that a group to which he or she is ascribed is not by law a terrorist group. Curtailment of witnesses such as experts in international or national law relating to the analysis of terrorism could seriously hinder the defence. The Special Rapporteur is keenly aware that there are complex legal questions at stake - questions that an ordinary defence counsel is ill-prepared to address even in the most highly educated of legal communities. Further, in many States the judiciary might be reluctant to countermand the State in these matters. Even in States with a relatively impartial, independent judiciary, there are few lawyers and judges with sufficient education in international human rights and humanitarian law standards to rule fairly, especially if a defendant is not allowed experts or other witnesses.

117. Judicial process rights may be especially at risk when a State uses group liability or conspiracy laws against alleged members of groups labelled as terrorist. For example, a person who may have once distributed literature relating to the same goal as an alleged terrorist group could be charged with aiding and abetting terrorism and could be charged with any acts proved to have been carried out by the group - acts of which a defendant has no involvement or even awareness. Conspiracy laws can be especially harmful to procedural rights in situations of internal or international armed conflict that a State has labelled as "terrorist". Such situations can dramatically impair rights under humanitarian law in cases where there is no group liability and where both legitimate military acts and acts in support of humanitarian relief cannot be criminalized.

B. Indirect impact

118. Either State or non-State actors may intentionally fan the fear of terrorist acts against a population. Fear out of proportion to actual risk can generate, for example, attitudes of generalized fear of a particular race or religion. Clearly, in a number of countries orchestrated denouncing of certain groups has already resulted in generalized racism and religious intolerance. Undue fear leads to weakened resistance to overly harsh anti-terrorism measures. The desire of a State to have such measures may lie behind fear campaigns. Some States may consider that the resulting racism and religious intolerance is useful to its political agenda and therefore worth the price. However, from a human rights perspective such cynicism is offensive and has had a serious negative effect on human rights wherever these policies occur.[173] In any case, there may be a serious risk of curtailment of basic civil liberties.

119. There are two related sub-issues to the undue fear situation, which - although highly political - have a direct relationship to human rights. A State's people may be motivated into an irrational fear of other States and of their leaders and people far out of proportion to any risk actually posed. This, of course, has a negative impact on the idea of international solidarity. The imposition of unilateral sanctions or other penalties by States sometimes, in an attempt to extend these sanctions and penalties to third party States, is a policy that the General Assembly has

repeatedly and forcefully rejected as being in violation of the Charter. While having an impact on civil and political rights, this also has and can continue to have a serious impact on economic, social and cultural rights, both in obvious and not so obvious ways. In any case, the practice of unilateral action can be viewed as violating the spirit of the international organization's appeals for international cooperation in addressing terrorism and terrorist acts.

120. The second of the sub-issues relating to undue fear of terrorism arises in the context of the "my freedom fighter is your terrorist" debate that the Special Rapporteur has already referred to above and in her previous work. Indeed, there may be a number of reasons why some States would purposefully mislabel armed conflict situations as terrorism, but the Special Rapporteur does not need to dwell on this here.

C. The question of impunity

121. The Commission and the Sub-Commission have both raised the issue of impunity in relation to terrorism.[174] Clearly, an important method of reducing terrorist acts is to deter future acts by resolute prosecution of those involved. Rather than deterring terrorism, State practices of impunity can only be viewed as encouraging terrorism.

122. The Sub-Commission has already addressed impunity involving civil and political rights, as well as economic, social and cultural rights, in two excellent studies.[175] While neither study directly addresses terrorist acts, terrorist acts viewed as impairing civil and political rights have been those drawing the most attention in the Commission and the Sub-Commission and on the part of the Special Rapporteur in her previous work and in the present report as well. Yet a review of the types of acts mentioned by Mr. Guissé in his report addressing economic, social and cultural rights leads the Special Rapporteur to consider that the following current practices could potentially be considered in the context of terrorism and human rights: structural adjustment programmes that severely impair subsistence-level economic rights (E/CN.4/Sub.2/1996/15, paras. 65-69), embargoes (paras. 70-72), corruption of government officials (paras. 73-79), monetary fraud (paras. 83-85), human caused ecological disasters (paras. 93-98), the manipulation of health systems and pharmaceuticals (para. 106) and the manipulation of foodstuffs (paras. 107-109). Mr. Guissé provides a two-part scheme for judicial measures addressing impunity: compensation for victims and prosecution of violators. He recommends that violations of economic, social and cultural rights should be declared international crimes with universal jurisdiction.

123. The Special Rapporteur rejects any impunity for terrorist acts, whether perpetrated by State or non-State actors, and involving civil, political, economic, social or cultural acts. Regrettably, impunity occurs, and in many guises. In the case of non-State actors, impunity can occur under the guise of selective prosecution or prosecutorial discretion. While this is occasionally valid, due to a realistic appraisal that existing evidence against persons accused of terrorist acts is unconvincing, in some situations there is sufficient evidence to prosecute but the State chooses to ignore it. In some States, victims of the alleged terrorist acts, or their survivors, may not have legal standing to compel a State to prosecute the perpetrators. These victims or their survivors may also be unable to bring a civil action for damages because of a wide array of judicial barriers.

124. A key question that arises in the context of impunity is the degree to which a head of State or other State official can avoid judicial consequences for State terrorism under the theory of sovereign immunity. However, as has been made clear in post-Second World War tribunals, as well as in the tribunals recently established to address issues arising in the former Yugoslavia and Rwanda, there can be no sovereign immunity for war crimes, genocide or crimes against humanity. To this list, the Special Rapporteur thinks that State terrorism could be added, although, as already made clear above, in many instances of State terrorism, the State has engaged in either war crimes, crimes against humanity or genocide against its own people or nationals of another State.[176] Nevertheless, the Rome Statute of the International Criminal Court has not included acts of State terrorism occurring outside the context of armed conflict or genocide.

D. Extradition

125. Extradition of a person alleged to have committed a terrorist act from one State to another, legally-interested State is one way the international community can address impunity. International anti-terrorism instruments and most of the existing regional comprehensive conventions on terrorism have a heavy focus on the issue of extradition, in large part because extradition is almost universally viewed as a powerful tool in preventing impunity and, as a consequence, reducing terrorism. The fear of extradition to a State targeted by their acts or to a State that will prosecute is considered a major deterrent for potential terrorists. Thus, it is important that persons who might be persuaded to commit terrorist acts know that, if captured, they would surely be prosecuted. Such persons must also understand the relationship between the law of political asylum and the evolving law of terrorism, under which persons who have committed terrorist acts may not be granted asylum.[177] Thus, an international regime with operative extradition laws, in which there is no safe haven for persons who have committed terrorist acts, could be viewed as an effective deterrent to terrorist acts.

126. Of course, there should be careful scrutiny of calls by one State to another State to hand over persons accused by that State of having committed terrorist acts. Likewise, when calls for extradition are subject to judicial proceedings, courts should carefully review such appeals to ensure correct application of, inter alia, humanitarian law.

127. Extradition requests can also generate conflicts in the area of requisite evidence for a prima facie case, burdens of proof and other procedural issues that are not fully addressed in the regional conventions. Such conflicts could lead to a denial of an extradition request. Requested States or alleged perpetrators may also invoke a variety of forum non conveniens defences. For example, a requested State may refuse to turn over an alleged perpetrator to a State that might directly, or through its judicial system, violate a defendant's rights. In this regard, action has been taken to prevent return of requested persons to States having the death penalty. There are other factors relating to human rights compliance that a requested State may take into consideration prior to ordering extradition. In this regard, it is especially important that States have practices and judicial systems that fully comply with international human rights and humanitarian law norms, so as not to impair the use of extradition as a preventive force and a remedy against terrorism.

V. CONCLUDING OBSERVATIONS

128. Both the Commission and the Sub-Commission have requested the Special Rapporteur to address other issues related to terrorism that are best discussed here because they are actually means of reducing terrorism. Most of these issues relate directly to human rights and humanitarian law norms.

129. In reviewing contemporary terrorism, one might roughly observe that those States with the best human rights records are the States with the least likelihood of problems with domestic terrorism. Similarly, those States with international relationships that most conform to the goals and principles of the Charter are likely to be the States least affected by international terrorism. It follows that an obvious step to reduce terrorism is the full realization of human rights and the practice of genuine democratic processes throughout the world, among States and in every State. All efforts must be made to address better the realization of human rights, in particular in relation to self-determination, racism, internal ethnic and political representation, and class-based economic or cultural divisions in society.

130. Violations of human rights, humanitarian law and basic principles of the Charter, then, are among the major causal factors of terrorism. As noted earlier in this progress report, careful attention to causal factors of terrorism is one of the duties of all States regarding terrorism and human rights. The overall result of addressing causal factors could be a reduction in terrorist acts. Thus, rather than being viewed as "legitimizing" terrorist groups, as some States have suggested, careful study of causal factors should be an essential logical component of any plan to reduce terrorism, especially with regard to problem areas or situations in which terrorist acts occur with frequency.

131. The full realization of human rights also involves achievement of economic balance among States, including the right to development. In similar fashion, better efforts should be made to achieve improved relations between States, not only because this is mandated in the Charter, but also because it is viewed as essential to the global realization of human rights as indicated in article 28 of the Universal Declaration: quite clearly an international order that is generating terrorist acts hardly qualifies as a "social and international order in which the rights and freedoms set forth in th[e] Declaration can be fully realized".

132. In the course of her work, the Special Rapporteur became aware that the scale and scope of this topic is perhaps larger than other topics undertaken by the Sub-Commission. In this progress report, she has sought to provide more theoretical insight into some of the many complex issues relevant to the study on terrorism and human rights, giving attention to the issues raised by the Commission and Sub-Commission. However, limitations concerning the size of Sub-Commission reports have not made it possible to fully address all the issues that the Special Rapporteur believes should be included in this progress report.

133. There is much more that needs to be assessed concerning extradition in the context of terrorism. As already mentioned, the new regional conventions place great emphasis on extradition. The issue of a sovereign immunity defence when a State actor is charged with acts of State terrorism also deserves more attention, as it stands prominently before the international community in several cases recently or not yet resolved. The Special Rapporteur would also like

to review some ongoing or recently concluded cases relating to international terrorism and she considers that review of all the existing comprehensive regional instruments on terrorism would be very useful in the context of definition as well. Last but not least, she would like to complete her consideration of sub-State (or individual) terrorism and of the related question of the accountability of non-State actors before the final report.

134. In the light of her concerns about this array of topics that need more attention, the Special Rapporteur recommends that the Sub-Commission consider authorizing her to prepare a second progress report.

Notes

[1] The Special Rapporteur set out prior international action on terrorism in her working paper (E/CN.2/Sub.2/1997/28, para. 4) and in her preliminary report (E/CN.4/Sub.2/1997/27, paras. 6-13).

[2] As is well known, in the past the Security Council has dealt with the issue of international terrorism in individual cases only. The Security Council addressed the matter of international terrorism in general in a statement issued on the occasion of the Security Council Summit of 31 January 1992, in which the Members of the Security Council expressed their deep concern over acts of international terrorism and emphasized the need for the international community to deal effectively with all such acts (S/23500 of 31 January 1992).

[3] Earlier ad hoc committees established by the General Assembly with a view to studying or dealing with the fight, or with aspects of the fight, against international terrorism have been the Ad Hoc Committee on International Terrorism (General Assembly resolution 3034 (XXVII) of 18 December 1972) and the Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages (General Assembly resolution 31/103 of 15 December 1976) both composed of 35 States. See also E/CN.4/Sub.2/1999/27, para. 11, and notes 10 and 11.

[4] See Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Fourth session (14-18 February 2000) (A/55/37).

[5] Ibid., paras. 20-25.

[6] Ibid., para. 26.

[7] These are: Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 (entered into force on 4 December 1969); Convention on the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 (entered into force on 14 October 1971); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 (entered into force on 26 January 1973); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the

General Assembly of the United Nations on 14 December 1973 (entered into force on 20 February 1977); International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 (entered into force on 3 June 1983); Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980 (entered into force on 8 February 1987); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988 (entered into force on 6 August 1989); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988 (entered into force on 1 March 1992); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988 (entered into force on 1 March 1992); Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 (entered into force on 21 June 1998); International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997 (not yet in force); International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999 (not yet in force); Arab Convention on the Suppression of Terrorism, signed at a meeting held at the General Secretariat of the League of Arab States in Cairo on 22 April 1998; Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999 (not yet in force); European Convention on the Suppression of Terrorism, concluded at Strasbourg on 27 January 1977 (entered into force on 4 August 1978); OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded at Washington, D.C., on 2 February 1971 (entered into force on 16 October 1973); OAU Convention on the Prevention and Combating of Terrorism adopted at Algiers on 14 July 1999 (not yet in force); SAARC Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987 (entered into force on 22 August 1988); Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on 4 June 1999 (entered into force on the date of its signature for those of the Parties whose legislation does not require completion of domestic procedures).

[8] See Report of the Working Group (A/C.6/55/L.2 of 19 October 2000).

[9] European Parliament, resolution A5-0050/2000 of 16 March 2000.

[10] Ibid., paras. 41-42.

[11] See A/54/917-S/200/580, annex.

[12] See A/54/637-S/1999/1204 of 11 October 2000.

[13] OIC, Ninth Summit Conference (Qatar, 2000), Doha Declaration.

[14] See E/CN.4/Sub.2/1999/27, paras. 7-12 and 41-42 and E/CN.4/Sub.2/1997/28, paras. 11 and 17.

[15] See, for instance, A.P. Schmid, Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature, Amsterdam, North-Holland Publishing Co., 1983, pp. 119-152, who compiled 109 definitions of terrorism, and J.F. Murphy, "Defining international terrorism: a way out of the quagmire", Israel Yearbook on Human Rights, vol. 19 (1989), p. 13, referring to another leading commentator on terrorism, Walter Laqueur, who had pointed out that between 1936 and 1981, 109 different definitions of terrorism were advanced, and more since then, including a half dozen provided by the United States Government, each one different from the other.

[16] J.J. Lambert, Terrorism and Hostages in International Law, Cambridge, Grotius Publications Ltd., 1990, p. 13.

[17] See, for example, G. Guillaume, "Terrorisme et droit international", Collected Courses of The Hague Academy of International Law, vol. 215 (1989-III), p. 295, and G. Wardlaw, Political Terrorism: Theory, tactics, and counter-measures, Cambridge, Cambridge University Press, 1982, pp. 4-5.

[18] E/CN.4/Sub.2/1997/28, para. 17.

[19] E/CN.4/Sub.2/1999/27, para. 43.

[20] Ibid., para. 42.

[21] E/CN.4/Sub.2/1997/SR.33, para. 68.

[22] E/CN.4/Sub.2/1999/SR.33, para. 72.

[23] E/CN.4/Sub.2/1997/SR.34, para. 22. Cf., however, the same expert in E/CN.4/Sub.2/1996/SR.35, para. 11, and see also E/CN.4/Sub.2/1999/SR.27, para. 71, where the same expert, recognizing the difficulty of definition, expresses satisfaction that the Special Rapporteur envisages only provisional definitions and just "for the purposes of this study".

[24] E/CN.4/Sub.2/1999/SR.26, para. 56.

[25] E/CN.4/Sub.2/1997/SR.33, para. 40.

[26] E/CN.4/Sub.2/1999/SR.26, para. 66.

[27] See, for instance, Mr. I. Maxim and Mr. M. Alfonso Martínez in E/CN.4/Sub.2/1997/SR.33, paras. 44 and 76-77 respectively.

[28] Mr. H. Fix Zamudio, ibid., para. 42.

[29] Mr. M. Bossuyt, ibid., para. 48.

[30] Mr. M. Bossuyt in E/CN.4/Sub.2/1999/SR.26, para. 66.

[31] Mr. S. Sorabjee in E/CN.4/Sub.2/1999/SR.27, para. 82.

[32] Ms. F. Hampson, ibid., paras. 23-25.

[33] Mr. R.K.W. Goonesekere, ibid., para. 78.

[34] Mr. A. Eide in E/CN.4/Sub.2/1999/SR.30, para. 39.

[35] Ms. H. Warzazi in E/CN.4/Sub.2/1995/SR.11, para. 41.

[36] See Lambert, note 16 supra, p. 13, Wardlaw, note 17 supra, pp. 4-5 and R.E. Rubenstein, Alchemists of Revolution: Terrorism in the Modern World, New York, Basic Books Inc., 1987, p. 17.

[37] Supra, note 3.

[38] See also F.J. Hacker, Crusaders, Criminals, Crazies: Terror and Terrorism in Our Time, New York, W.W. Norton and Co., 1976, using the terms "terror from above" and "terror from below", as cited by Wardlaw, note 17 supra, p. 69.

[39] A good historical overview of terrorism may be most conveniently found in R.A. Friedlander, Terrorism: Documents of International and Local Control, vol. I, New York, Oceana Publications, 1979, pp. 1 ff.

[40] See, for instance, Guillaume, note 17 supra, pp. 296-297, and see also the study prepared by the United Nations Secretariat for the Sixth Committee, under the title "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes" (A/C.6/418 of 2 November 1972).

[41] See paras. 51-67.

[42] See generally A. Soboul, The French Revolution 1787-1799, New York, Vintage, 1975.

[43] See generally W. Laqueur, Terrorism, Boston, Little, Brown and Company, 1977, pp. 11 ff.

[44] See generally Wardlaw, note 17 supra, pp. 25 ff., and W. Laqueur, The New Terrorism: Fanaticism and the Arms of Mass Destruction, Oxford, Oxford University Press, 1999, pp. 56 ff.

[45] For a distinction between the meaning of "terror" and "terrorism", see International Encyclopedia of Terrorism, Chicago and London, Fitzroy Dearborn Publishers, 1997, p. 13. See also Wardlaw, note 17 supra, pp. 9-13.

[46] Supra, para. 37. See also W.D. Purdue, Terrorism and the State. A Critique of Domination through Fear, New York, Praeger, 1989, p. 33 ff.

[47] Ibid., p. 38 ff. Alexander Solzhenitsyn, the expatriate Soviet writer, had argued that Joseph Stalin used the KGB and the bureaucracy (courts, prisons, etc.) to terrorize, purge and destroy over 15 million peasants, communists, prisoners of war and ethnic nationals. See L. Kuper, Genocide: Its Political Use in the Twentieth Century, New Haven, Yale University Press, 1982, p. 141.

[48] See generally International Encyclopedia of Terrorism, note 45 supra, p. 102 ff., as well as Perdue, note 46 supra, p. 36 ff. And see also Department of State, Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials (1949), p. 4: "The criminality of the German leaders and their associates does not consist solely of individual outrages, but represents the result of a systematic and planned reign of terror".

[49] International Encyclopedia of Terrorism, note 45 supra, pp. 688-689. See also Amnesty International, Political Killings by Governments, London, Amnesty International, 1983, p. 44.

[50] International Encyclopedia of Terrorism, note 45 supra, pp. 686-687.

[51] See generally J. Simpson and J. Bennett, The Disappeared and the Mothers of the Plaza, New York, St.Martin's Press, 1985, and also the Introduction by M. Stohl and G. A. Lopez, in M. Stohl and G.A. Lopez, eds., The State as Terrorist. The Dynamics of Governmental Violence and Repression, Westport, Conn., Greenwood Press, 1984, p. 4.

[52] Supra, note 38.

[53] See, for instance, the introductory remarks by Professor C. Bassiouni, Chairman of the Panel on "Human Rights v. New Initiatives in the Control of Terrorism", in American Society of International Law: Proceedings of the 79th Annual Meeting, New York, 1985, p. 289.

[54] See Guillaume, note 17 supra, p. 298. But see also the third preambular paragraph, and article 30 of the Universal Declaration of Human Rights. Perdue, note 46 supra, pp. 17-19, referring to Max Weber's theory of legitimation founded in a rational-legal basis for rule, exemplified by a system of laws and embodied in bureaucratic forms of administration,

perceives the relationship between terrorism and the modern State within a critique of the Weberian thought and assumes that State power may be used quite "systematically" to maintain an order of inequality with not only domestic but global dimensions.

[55] See generally R. Falk, Revolutionaries and Functionaries, New York, E.P. Dutton, 1988.

[56] Lambert, note 16 supra, p. 15, footnote 13.

[57] The domestic jurisdiction provision of the Charter of the United Nations stipulates: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State."

[58] See, for instance, M.N. Shaw, International Law, 4th ed., Cambridge, Cambridge University Press, 1997, p. 202.

[59] The International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights), the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the American Convention on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms are but a few outstanding examples of this evolution.

[60] Shaw, note 58 supra, p. 204.

[61] Guillaume, note 17 supra, p. 298.

[62] Ibid., p. 299.

[63] See H.-P. Gasser, "Prohibition of terrorist acts in international humanitarian law", Extract from the International Review of the Red Cross, 1986, pp. 6-7.

[64] See, for instance, Prosecutor v. Dusko Tadic a/k/a "Dule", Decision of 2 October 1995 on the Defence Motion for Interlocutory Appeal on Jurisdiction, para. 141, as well as Prosecutor v. Dusko Tadic, Judgement of 15 July 1999 of the Appeals Chamber, para. 251, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, affirming that, under customary international law, crimes against humanity may also be committed in times of peace.

[65] See M. Crenshaw and J. Pimlott, eds., Encyclopedia of World Terrorism, vol. I, New York, Sharpe Reference, 1997, p. 206.

[66] See also Lambert, note 16 supra, p. 19.

[67] Encyclopedia of World Terrorism, vol. I, note 65 supra, p. 206.

[68] For instance, after the reunification of Germany in 1990, evidence emerged that leftist terrorists had received extensive training in East German camps. In these facilities, recruits were trained in the use of small arms and explosives, in intelligence-gathering, surveillance and mission-planning techniques. See International Encyclopedia of Terrorism, note 45 supra, p. 681.

[69] W. Laqueur, The Age of Terrorism (1987), pp. 268-269, as quoted by Lambert, note 16 supra, p. 19 and note 33.

[70] See, for instance, Nonviolent Responses to Violence-Prone Problems: The Cases of Disputed Maritime Claims and State-Sponsored Terrorism, Reports of Two Special Committees of the American Society of International Law, Studies in Transnational Legal Policy No. 22, Washington, D.C., The American Society of International Law, 1991 p. 18 ff., and Encyclopedia of World Terrorism, vol. I, note 65 supra, pp. 206-207.

[71] See generally, Non-violent Responses to Violence-Prone Problems, note 70 supra, pp. 18-19; G. Wardlaw, Political Terrorism: Theory, Tactics and Countermeasures, 2nd revised ed., Cambridge, Cambridge University Press, 1989, p. 175 ff., M. Stohl, "International dimensions of State terrorism", in Stohl and Lopez, note 51 supra, pp. 43-58; W. Laqueur, "Reflections on terrorism", Foreign Affairs, 1986, Fall, vol. 65, pp. 86-100; P. Wilkinson "State-Sponsored international terrorism: the problems of response", The World Today, 1984, July, pp. 292-298.

[72] See, for instance, Laqueur, note 44 supra, p. 156 ff.

[73] See International Encyclopedia of Terrorism, note 45 supra, p. 677.

[74] Ibid.

[75] See B. M. Jenkins, New Modes of Conflict, Santa Monica, California, RAND Publications Series R-3009-DNA, 1983, p. v. In this quasi-official publication of the RAND Corporation, the prominent expert on terrorism from the RAND refers to "indirect forms of warfare" as follows: "Indirect forms of warfare include clandestine and covert military operations carried out by other than the regular armed forces of a nation, providing asylum and support for guerrillas in an adjacent country, providing support - and sometimes operational direction - to terrorist groups opposing a rival or enemy regime, and governmental use of terrorist tactics, such as assassinating foreign foes or troublesome exiles".

[76] See, for instance, P. Wilkinson, Terrorism and the Liberal State (2nd ed.), London, Macmillan, 1986, p. 277 ff., and Lambert, note 16 supra, p. 20.

[77] J.F. Murphy, State Support of International Terrorism: Legal, Political and Economic Dimensions, Boulder, Colorado, Westview Press, 1989, p. 36, who continues (p. 37) with a reference to "low-intensity conflict" defined by the United States Army, as follows: "a broad term describing political-military struggle short of conventional warfare between national armed forces, to achieve political, social, economic, or psychological objectives. It is often protracted and ranges from diplomatic, economic, and psycho-social pressures through terrorism to insurgent war".

[78] See, for instance, Wardlaw, note 71 supra, p. 182 ff.

[79] Ibid., as well as Falk, note 55 supra, pp. 136-137.

[80] Wardlaw, note 71 supra, p. 175.

[81] For example, former United States Under-Secretary of State G. Ball, in "Shultz is wrong on terrorism", The Gainesville Sun, 27 December 1984, p. 11A, made the following point: "States sponsored terrorism menaces the whole international order, and if we are to maintain even minimum world stability we must ostracize any nation condoning it. Meanwhile, let us take care that we are not led, through panic and anger, to embrace counterterror and international lynch law and thus reduce our nation's conduct to the squalid level of the terrorists". Cited in C.W. Kegley, Jr., T. Vance Sturgeon and E.R. Wittkopf, "Structural terrorism: the systemic sources of State-sponsored terrorism", in M. Stohl and G.A. Lopez, Terrible Beyond Endurance? - The Foreign Policy of State Terrorism, New York, Greenwood Press, 1988, p. 27.

[82] For poignant cautions against overreacting to State-sponsored terrorism, see generally, Falk, note 55 supra and Wardlaw, note 71 supra, passim.

[83] For such a discussion see, for instance, Nonviolent Responses to Violence-Prone Problems, note 70 supra, p. 24 ff., and Murphy, note 77 supra, pp. 55-111. And see also, more generally, Guillaume, note 17 supra, pp. 373-406.

[84] See paras. 7, 38-39 of the preliminary report of this Special Rapporteur (E/CN.4/Sub.2/1999/27). See also the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits Judgment, I.C.J. Reports 1986, in which the International Court of Justice acknowledged the customary international law quality and characteristics of this instrument (paras. 188, 191-192). Furthermore, while terrorism was not the focus of the proceedings before it, some of the conclusions reached by the Court are very relevant, albeit indirectly, to the issue of State-sponsorship of terrorism. For example, the Court held that the United States by its assisting the contras, where its activities involved a threat or use of force, and by "training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua", had violated its customary international law obligations not to use force against another State and not to intervene in the affairs of another State (paras. 228, 238 and 292).

[85] It is interesting to note that international agreement on the principle that States have a responsibility not to conduct, support or encourage terrorist activity against other States had already been reached in the framework of the League of Nations. See article I of the abortive Convention for the Prevention and Punishment of Terrorism, adopted on 16 November 1937 under its auspices (League of Nations document c. 546 (I). M. 383 (I). 1937. v). Moreover, in 1934 the Council had resolved that States had the duty not to encourage or tolerate in their territory terrorist activity directed against other States. See 1934 League of Nations Official Journal 1839, mentioned in Lambert, note 16 supra, p. 29, note 82. Such prohibitions are also contained in article 3 (f) and (g) of General Assembly resolution 3314 (XXIX) of 14 December 1974 containing a Definition of Aggression, as well as in General Assembly resolution 2734 (XXV) of 16 December 1970, on the Declaration on the Strengthening of International Security, which "[s]olemnly reaffirms ... that every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State".

[86] See also Guillaume, note 17 supra, p. 299.

[87] Stohl, note 71, supra, p. 43.

[88] Ibid., p. 44 ff., Kegley, Vance Sturgeon and Wittkopf, note 81 supra, p. 22 ff. See also Lambert, note 16 supra, p. 16, and Falk, note 55 supra, pp. 170-171.

[89] Official Records of the General Assembly, Twenty-Eighth Session, Supplement No. 28 (A/9028), 1973, para. 24. See also ibid., para. 38 and T.M. Franck and B.B. Lockwood, Jr., "Preliminary thoughts towards an international convention on terrorism", The American Journal of International Law, vol. 68 (1974), pp. 73-74.

[90] Lambert, note 16 supra, p. 16.

[91] Ibid., referring also to Stohl, note 71 supra, p. 48.

[92] A revealing example is the Rainbow Warrior incident, in which French intelligence agents engaged in an act of terrorism in the port of Auckland, New Zealand, in 1985, destroying the Greenpeace ship Rainbow Warrior, which was protesting French nuclear testing in the South Pacific. This act incidentally resulted in the death of a member of the crew. The Government of France issued an apology, eventually agreed to a mediation procedure, over which the United Nations Secretary-General presided, and accepted some financial responsibility for the death of the member of the crew.

[93] For a revealing example of this confusion, see the text accompanying note 89 supra.

[94] See generally, International Encyclopedia of Terrorism, note 45 supra; Friedlander, note 39 supra; R.H. Kupperman and D.M. Trent, eds., Terrorism: Threat, Reality, Response, Stanford, California, Hoover Institution Press, 1980; A.E. Evans and J.F. Murphy, eds., Legal Aspects of International Terrorism, Lexington, Massachusetts, Lexington Books, 1978; W.M. Reisman,

"International legal responses to terrorism", Houston Journal of International Law, vol. 22, No. 1 (1999), p. 50 ff, and Rubenstein, note 36 supra. See also Lambert, note 16 supra, p. 15; Stohl and Lopez, note 51 supra, p. 3; and Schmid, note 15 supra, pp. 104-105 who estimates that probably more than 90 per cent of the literature on terrorism is on non-State terrorism.

[95] Laqueur, note 69 supra, quoted by Lambert, note 16 supra, pp. 14-15, note 11.

[96] E/CN.4/Sub.2/1997/28, paras. 14-16; E/CN.4/Sub.2/1999/27, paras. 44-45.

[97] In practically all United Nations efforts to date, there is regular mention that armed conflict is not terrorism. For example, in the first report of the first Ad Hoc Committee on International Terrorism (note 89 supra, para. 37), there was mention that the Committee should not consider acts arising from armed conflict.

[98] See, for instance, E/CN.4/Sub.2/1997/28, para. 11.

[99] For example, in the OIC Convention, article 2 (a) provides: "Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime". The OAU Convention sets out its parallel provision in its article 3, paragraph 1, as follows: "... the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces, shall not be considered as terrorist acts".

[100] The need to distinguish clearly between terrorism and national liberation struggles has been a dominant theme of the OIC especially, as set out above. The OIC has characterized the debates on this issue as "frantic attempts aimed at obliterating the clear distinction between terrorism and the legitimate struggle of peoples which conforms with the principles of international law and the provisions of the Charters of the Organisation of the Islamic Conference and the United Nations" (OIC resolution 53/8-P (IS)). In the resolution from the most recent Islamic Summit the term "frantic" has been changed to "rabid" (OIC resolution 64/9-P (IS)). See also generally E. Chadwick, Self-determination, Terrorism and the International Humanitarian Law of Armed Conflict, The Hague, Martinus Nijhoff, 1996.

[101] The main instruments of humanitarian law include: The Hague Convention and Regulations of 1907, 205 Perry's Treaty Series 277; The Geneva Conventions I-IV of 1949, 75 United Nations Treaty Series 31, 75 United Nations Treaty Series 85, 75 United Nations Treaty Series 135 and 75 United Nations Treaty Series 267 (the Geneva Conventions); Additional Protocol I to the Geneva Conventions of 1949, 1125 United Nations Treaty Series 3 (Additional Protocol I); Additional Protocol II to the Geneva Conventions of 1949, 1125 United Nations Treaties Series 609 (Additional Protocol II); the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 754 United Nations Treaty Series 73. There are also many resolutions of the General Assembly, primarily relating to the protection of civilians in armed conflicts, that are also part of the law of armed conflict.

[102] The International Court of Justice forcefully stressed the jus cogens obligation of all States and parties to respect and ensure respect for humanitarian law in all circumstances, including in situations in which a State is not directly involved. See Military and Paramilitary Action in and against Nicaragua, note 84 supra, paras. 113-115, and see also paras. 151-153 (Singh, separate opinion) and paras. 199-200 (Sette-Camara, separate opinion). The Court recognized also that this rule applies regardless of the type of armed conflict, having determined that the armed conflict between the contras and the Government of Nicaragua was a civil war, (ibid., para. 114), construing this principle in the light of provisions of humanitarian law governing civil wars.

[103] International armed conflicts have traditionally been viewed as being between two States. However, since the entry into force of Additional Protocol I to the Geneva Conventions, wars of national liberation and against racist regimes are now legally international armed conflicts. See Additional Protocol I, article 1. This article does not, regrettably, define a racist regime. However, there is a great deal of human rights law, including treaties, that could be used to determine whether a particular regime is sufficiently racist to allow application of humanitarian law to armed opposition, assuming that minimum civil war criteria are not met.

[104] Humanitarian law applies whether there is a declaration of war or not. Most contemporary wars are fought with no declaration.

[105] This article is universally accepted as a statement of the existing customary international law definition of civil war.

[106] Additional Protocol II, article 1.2.

[107] Under humanitarian law, civil wars do not have to be "justified" - they may be fought for any reason whatsover. The essential is whether the level of armed activity rises to civil war criteria. Guerrilla warfare also is not prohibited in the laws and customs of war. See generally M. Veuthey, Guérilla et droit humanitaire, Genève, Comité International de la Croix-Rouge, 1983.

[108] The Special Rapporteur has found useful in this regard an annual review of wars (undertaken since 1995) by K. Parker, A. Heindel, and A. Branch, Armed Conflict around the World Today: A Country by Country Review, Humanitarian Law Project/Parliamentary Human Rights Group, United Kingdom. Also available at www.hri.ca/doccentre/armedconflict.

[109] It will be recalled that article 1.4 of Additional Protocol I provides for the application of humanitarian law governing international wars in situations "in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations." Indeed, there is rarely controversy regarding application of humanitarian law when there is no self-determination issue involved.

[110] The Statutes of the International Tribunals for the former Yugoslavia and Rwanda provide a useful guide to what are now considered serious violations of the laws and customs of war. The four "grave breach" articles in the 1949 Geneva Conventions (First Convention, article 50; Second Convention article 51; Third Convention, article 130; Fourth Convention, article 147) and the two Additional Protocols also identify those acts in armed conflicts that constitute serious violations.

[111] It should be noted that the Geneva Conventions contain a number of provisions mandating action in the case of violations, for example articles 129 to 132 of the Third Geneva Convention, which are repeated in similar articles in each of the other three conventions. The General Assembly has also addressed the enforcement of humanitarian law. See especially, Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, proclaimed by the General Assembly in resolution 3074 (XXVIII) of 3 December 1973.

[112] There are also efforts in Cambodia and Indonesia to institute internal proceedings against those accused of war-time offences in which international observers may participate. In a number of countries, there have been general amnesties for both sides in civil wars where serious violations occurred on both sides.

[113] See, Rome Statute of the International Criminal Court, adopted on 17 July 1998 (A/CONF.183/9). There are now only 27 of the required 60 ratifications for the treaty to enter into force. Even so, the Preparatory Committee has completed work on the elements of genocide, war crimes and crimes against humanity (see PCNICC/2000/1/Add. 2).

[114] See, for example, article 49 of the First Geneva Convention of 1949. The same article is set out with exactly the same language in the three other Geneva Conventions of 1949.

[115] Frequently the occupying States label even such internationally protected acts as peaceful protest or the provision of humanitarian aid, as terrorist acts.

[116] It is clear that, under humanitarian law rules, considerably less armed conflict (or indeed none at all) is necessary to invoke humanitarian law when there is a claim of self-determination, which is perhaps why so many groups seek to invoke it.

[117] Especially after March 1995 - when members of the Japanese cult, Aum Shinrikyo, dispersed sarin nerve gas in the Tokyo subway - the idea that terrorism is likely to escalate to new, monstrous proportions by resorting to the use of unconventional weapons has gained increased popularity among writers. See generally, B. Roberts, ed., Terrorism with Chemical and Biological Weapons: Calibrating the Risks and Responses; Alexandria, Virginia, The Chemical and Biological Arms Control Institute, 1997; J.K. Campbell, Weapons of Mass Destruction Terrorism, Seminole, Florida, Interpact, 1997; E.M. Spiers, "Chemical and biological terrorism", in Brassey's Defence Yearbook 1996, London and Washington, Brassey's, 1996, pp. 254-272; B. Hoffman, Inside Terrorism, New York, Columbia University Press, 1998; B. Hoffman, "Terrorism and the WMD: some preliminary hypotheses", The Nonproliferation Review, Spring-Summer 1997, pp. 45-53; Laqueur, op. cit., note 44 supra; W. Laqueur, "Postmodern

terrorism", Foreign Affairs, Sep/Oct 1996, pp. 24-36; A. Carter, J. Deutch and P. Zelikow, "Catastrophic terrorism: tackling the new danger", Foreign Affairs, Nov/Dec 1998, pp. 80-94; J. Stern, The Ultimate Terrorists, Cambridge, Harvard University Press, 1999; G. Schweitzer, Superterrorism: Assassins, Mobsters and Weapons of Mass Destruction, New York, Plenum Press, 1998.

[118] For similar conclusions see, for example, A. E. Smithson and L.-A. Levy, Ataxia: The Chemical and Biological Terrorism Threat and the US Response, Report No. 35, The Henry L. Stimson Center, Washington, 2000; E. Sprinzak, "The great superterrorism scare", Foreign Policy, Fall 1998, pp. 110-124; B.M. Jenkins, "Will terrorists go nuclear?", Orbis, Autumn 1985, pp. 507-515; B.M. Jenkins, "The limits of terror: constraints on the escalation of violence", Harvard International Review, Summer 1995, p. 44; D. Claridge, "Exploding the myths of superterrorism", in M. Taylor and J. Horgan, eds., The Future of Terrorism, London, Frank Cass, 2000, pp. 133-148.

[119] For particularly gruesome worst-case scenarios see, for example, Carter and others, note 117 supra, p. 81 and Stern, note 117 supra, pp. 1-4.

[120] For accessible technical accounts of chemical weapons, see Smithson and Levy, note 118 supra, p. 29; J. B. Tucker, ed., Toxic Terror: Assessing Terrorist Use of Chemical and Biological Weapons, Monterey Institute of International Studies, Cambridge, Massachusetts, MIT Press, 2000, pp. 3-6; Stern, note 117 supra, p. 167. For a more rigorously technical account, see US Congress, Office of Technology Assessment, Technologies Underlying Weapons of Mass Destruction, OTA-BP-ISC-115, US Government Printing Office, Washington, D.C., December 1993.

[121] Laqueur, note 44 supra, p. 59; Smithson and Levy, note 118 supra, p. 29.

[122] See, for instance, Spiers, note 117 supra, pp. 257 and 263, as well as Smithson and Levy, note 118 supra, p. 31, for a chart of commercial applications of chemical weapon precursors.

[123] Ibid., p. 32.

[124] R. A. Falkenrath, R.D. Newman, and B.A. Thayer, America's Achilles' Heel: Nuclear, Biological, and Chemical Terrorism and Covert Attack, Cambridge, Massachusetts, MIT Press, 1998, p. 102.

[125] See generally A.E. Smithson, Separating Fact from Fiction: The Australia Group and the Chemical Weapons Convention, Washington, D.C., Henry L. Stimson Center, 1997.

[126] See Tucker, note 120 supra, pp. 6-9; Smithson and Levy, note 118 supra, p. 36.

[127] See R. A. Falkenrath, "Confronting nuclear, biological, and chemical terrorism", Survival, vol. 40, No. 3, Autumn 1998, pp. 43-65.

[128] See Spiers, note 117 supra, p. 258. See also Smithson and Levy, note 118 supra, p. 34, mentioning that, released outdoors, 220 pounds of sarin would be necessary to kill 500 people, and 2,200 pounds to kill 10,000 people.

[129] Ibid., p. 279. See also Claridge, note 118 supra, p. 139 ff.

[130] For analyses of Aum Shinrikyo's experiences with chemical and biological weapons, see D.E. Kaplan, "Aum Shinrikyo", in Tucker, note 120 supra, pp. 207-226, Smithson and Levy, note 118 supra, pp. 71-111; D. E. Kaplan and A. Marshall, Cult at the End of the World, New York, Crown Publishers, 1996. See also R.J. Lifton, Destroying the World to Save It: Aum Shinrikyo, Apocalyptic Violence and the New Global Terrorism, New York, Metroplitan Books, 1999.

[131] Kaplan, note 130 supra, pp. 209-210; Stern, note 117 supra, p. 65.

[132] Smithson and Levy, note 118 supra, p. 281.

[133] Among the many sources, see the special issue of the Journal of the American Medical Association, 6 August 1997; United Nations, Chemical and Bacteriological (Biological) Weapons and the Effects of Their Possible Use, United Nations publication, Sales No. E.69.I.24, New York, 1969; World Health Organization, Health Aspects of Chemical and Biological Weapons, Geneva, 1970.

[134] The aforementioned Australia Group is attempting to institute export controls. See Smithson and Levy, note 118 supra, p. 40. See also Claridge, note 118 supra, pp. 139-140.

[135] Smithson and Levy, note 118 supra, pp. 45-50; Laqueur, note 44 supra, p. 55.

[136] See, for instance, D.A. Henderson, "Bioterrorism as a public health threat", Emerging Infectious Diseases, vol. 4, No. 3, Jul-Sept 1998, pp. 488-492, and Journal of the American Medical Association, note 133 supra, passim.

[137] Smithson and Levy, note 118 supra, pp. 51-56; Tucker, note 120 supra, pp. 6-9.

[138] Falkenrath, note 127 supra; p. 47; Stern, note 117 supra, p. 68.

[139] Laqueur, note 44 supra, p. 67.

[140] Stern, note 117 supra, p. 60, mentions that in 1997, General Aleksandr Lebed stated that 84 of 132 two-kiloton-yield suitcase bombs were unaccounted for. See also, generally, G. Cameron, Nuclear Terrorism: A Threat Assessment for the 21st Century, London, Macmillan Press Ltd., 1999.

[141] See, for instance, G.T. Allison, and others, Avoiding Nuclear Anarchy: Containing the Threat of Loose Russian Nuclear Weapons and Fissile Material, Cambridge, Massachusetts, MIT Press, 1996, and Stern, note 117 supra, pp. 87-106.

[142] Ibid., pp. 57-60, 97; by definition, weapons-grade uranium is enriched to more than 90 per cent U-235, and weapons-grade plutonium consists of less than 7 per cent Pu-240. See also Cameron, note 140 supra, pp. 131-132.

[143] Stern, note 117 supra, p. 98, writes: "no single known case has involved enough material to make a bomb". In Allison and others, note 141 supra, p. 10, it is stated: "literally hundreds of incidents have been reported, but the vast majority of the known incidents have been hoaxes or have not involved weapons-useable materials."

[144] Ibid., p. 13: "The question some people do ask, however, is whether there is a demand for stolen or illicitly purchased fissile material or nuclear weapons. So far, there is little hard evidence to prove the existence of this special form of nuclear-weapons demand."

[145] Stern, note 117 supra, p. 59.

[146] Ibid., pp. 54-57, 67; Falkenrath, note 127 supra, p. 62. In the most famous case of a threat of radiological terrorism, on 23 November 1995, Chechen guerrilla leader, Shamyl Basayev, buried a 32 kilo case of radioactive caesium in Izmailovski Park in Moscow, threatening to plant more; see Stern, note 117 supra, p. 67, and Cameron, note 140 supra, pp. 143-144.

[147] Ibid., pp. 133-135, Stern, note 117 supra p. 100; Laqueur, note 44 supra, p. 72.

[148] See, for example, Smithson and Levy, note 118 supra, pp. 11-13; and Sprinzak, note 118 supra, passim. See also note 117 supra.

[149] Stern, note 117 supra, p. 88.

[150] B.M. Jenkins, "Will terrorists go nuclear? A reappraisal", in H.W. Kushner, ed., The Future of Terrorism: Violence in the New Millennium, London, SAGE Publications, 1998, p. 230.

[151] See, for instance, J. D. Simon, Terrorists and the Potential Use of Biological Weapons: A Discussion of Possibilities, U.S. Armed Forces Medical Intelligence Center, RAND Corporation, Santa Monica, California, 1989, pp. 11-12.

[152] See generally Stern, note 117 supra; Laqueur, note 44 supra; and Hoffman, note 117 supra.

[153] Ibid., passim; E. M. Spiers, Weapons of Mass Destruction: Prospects for Proliferation, New York, St. Martin's Press, 2000, pp. 81-82; Simon, note 151 supra, p. v; Tucker, note 120 supra, p. 10; Laqueur, note 44 supra, passim; Cameron, note 140 supra, passim.

[154] Smithson and Levy, note 118 supra, p. 64.

[155] Ibid., pp. 57-69.

[156] See Sprinzak, note 118 supra, p. 116; Tucker, note 120 supra, p. 254.

[157] See Wardlaw, note 71 supra, p. 197, and cf., for example, the declaration by President Clinton of a state of national emergency regarding the proliferation of WMD, contained in Presidential Decision Directive 39: "The United States shall give the highest priority to developing effective capabilities to detect, prevent, defeat and manage the consequences of nuclear, biological, or chemical (NBC) materials or weapons use by terrorists", cited by J. M. Graham, "Introduction", pp. 9-20, in D.W. Siegrist and J. M. Graham, eds., Countering Biological Terrorism in the US: An Understanding of Issues and Status, Arlington, VA, Oceana Publications Inc., 1999, p. 10. See also, The White House, Office of the Press Secretary, 22 January 1999, "Remarks by the President on keeping America secure for the 21st Century", containing President Clinton's statement on new initiatives to address terrorism and the new terrorist-emerging tools and threats, as well as "Press briefing by Attorney-General Janet Reno, Secretary of HHS Donna Shalala, and Richard Clarke, President's National Coordinator for Security Infrastructure and Counter-terrorism", on the expansion of the United States Administration's efforts to combat the emerging threats of biological, chemical and cyber-terrorism. Cf., further, B. Kellman, "Review essay: clashing perspectives on terrorism", in The American Journal of International Law, vol. 94 (2000), pp. 434-438.

[158] See especially J. Arquilla, D. Ronfeldt, and M. Zanini, "Networks, netwar, and information-age terrorism", pp. 39-84 in Countering the New Terrorism, RAND Corporation, Santa Monica, 1999; J. Arquilla and D. Ronfeldt, The Advent of Netwar, RAND Corporation, Santa Monica, 1996; and J. Arquilla and D. Ronfeldt, eds., In Athena's Camp: Preparing for Conflict in the Information Age, RAND Corporation, Santa Monica, 1997. See also R.E. Stephens, "Cyber-biotech terrorism: going high tech in the 21st century", in Kushner, note 150 supra, pp. 195-207; and K.R. Damphousse and B.L. Smith, "The Internet: a terrorist medium for the 21st century", in Kushner, note 150 supra, pp. 208-224.

[159] See D. E. Denning, "Activism, hacktivism, and cyberterrorism: the internet as a tool for influencing foreign policy", paper presented at the Internet and International Systems: Information Technology and American Foreign Policy Decisionmaking Workshop, 1999, available at http://www.nautilus.org/info-policy/workshop/papers/denning.html; and M. M. Pollitt, Cyberterrorism - Fact or Fancy?, Proceedings of the 20th National Information Systems Security Conference, October 1997, pp. 285-289.

[160] See, for instance, Denning, note 159 supra, unpaginated.

[161] In her preliminary report, the Special Rapporteur aligns the human rights implications of terrorism into three conceptual clusters: (i) the right to life, liberty and dignity of the individual; (ii) issues relating to the right to a democratic society; and (iii) rights relating to social peace and public order.

[162] For instance, see the preliminary report submitted by Ms. Radhika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences (E/CN.4/1995/42, especially paras. 99-101), and the update to the final report submitted by Ms. Gay J. McDougall, Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict (E/CN.4/Sub.2/2000/21, para. 20).

[163] See, for example, Commission resolution 2000/45 of 20 April 2000, paragraphs 3 and 4, which affirm that violence against women, whether in public or private life, is a violation of the rights and fundamental freedoms of women.

[164] See, for example, Commission resolution 2000/30, seventeenth preambular paragraph: "Reiterating that all States have an obligation to promote and protect human rights and fundamental freedoms ...", and paragraph 5: "Urges States to fulfil their obligations under the Charter of the United Nations and other provisions of international law, in strict conformity with international law, including human rights standards, to prevent, combat and eliminate terrorism in all its forms and manifestations ...".

[165] The need to address root causes of terrorism has also been raised at the Commission and Sub-Commission by both Governments and non-governmental organizations.

[166] For State responsibility if the State fails to protect an alien or if it fails to take appropriate action to pursue and punish those responsible for certain terrorist acts, see for instance, J.J. Paust, "The Link Between Human Rights and Terrorism and Its Implications for the Law of State Responsibility", Hastings International and Comparative Law Review, vol. 11, No. 1 (1987), pp. 53-54.

[167] See Commission resolution 2000/30, twentieth preambular paragraph and paragraphs 5 and 6, and Commission resolution 2001/37, twenty-second preambular paragraph and paragraphs 5 and 6.

[168] See, for instance, M. Gerber, "The Anti-Terrorism Act of 1987: sabotaging the United Nations and holding the Constitution hostage", New York University Law Review, vol. 65 (1990), at pp. 364-402; Coordinadora Nacional de Derechos Humanos, Grupo de Trabajo Juridico, En nombre de los inocentes: la legislacion sobre terrorismo y traicion a la patria: prepuesta de modificacion, Lima, 1993; J. Robert, "Terrorisme, idéologie sécuritaire et libertés publiques", Revue de droit public et de la science politique en France et a l'etranger, vol. 6 (1986), pp. 1651-1666.

[169] See, especially A/55/179 of 26 July 2000 and A/55/179/Add.1 of 9 October 2000.

[170] The Special Rapporteur notes that, in certain situations, persons charged with terrorist acts have fewer procedural rights than persons charged with war crimes or crimes against humanity.

[171] A/55/179, para. 44.

[172] Ibid., para. 45. Several States indicate that there is no separate criminal offence of terrorism but rather perpetrators are charged under ordinary penal law statutes for the actual act. However, the determination of terrorism can substantially alter a number of other provisions in the criminal justice system.

[173] It is also important to point out that these practices and policies have all contributed to the failure to resolve the underlying situations in which they arise - some of them unresolved for decades.

[174] In addition to the resolutions on human rights and terrorism adopted by the Commission, there has been much attention to impunity in the general debates, as indicated by the number of statements by both government and NGO speakers on this topic.

[175] Question of the impunity of perpetrators of violations of human rights (civil and political), final report submitted by Louis Joinet (E/CN.4/Sub.2/1997/20) and Question of the impunity of perpetrators of violations of human rights (economic, social and cultural), final report submitted by El-Hadji Guissé (E/CN.4/Sub.2/1997/8). Mr. Joinet's report includes a set of principles to combat impunity which is especially relevant in this regard.

[176] See chapter II, B.3. and C., supra. For an interesting discussion of the question of State immunity in the light of the decision of the British House of Lords in the case against General Pinochet, see J.M. Sears, "Confronting the 'culture of impunity': immunity of heads of State from Nuremberg to ex parte Pinochet", in the German Yearbook of International Law, vol. 42 (1999), pp. 125-146.

[177] The Special Rapporteur must emphasize, however, that an asylum-seeker would, if alleged to have committed a terrorist act, have the right to refute that charge.